

United States

Circuit Court of Appeals

For the Ninth Circuit.

E. M. HOOVER, Trustee in Bankruptcy of the Estate of the JORDAN VALLEY LAND AND WATER COMPANY, a Bankrupt; and T. H. WEGENER, Trustee in Bankruptcy of the Estate of the JORDAN VALLEY FARMS, a Bankrupt,

Appellants,

vs.

THE MORTGAGE COMPANY FOR AMERICA,
Apellee.

Transcript of Record.

Upon Appeal from the United States District Court for the District of Oregon.

FILED

MAY 10 1923

F. D. MONCKTON,
CLERK

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

RICHARDS & HAGA and CHARLES E. WINSTEAD, Boise, Idaho, for E. M. Hoover, Trustee in Bankruptcy of the Jordan Valley Land and Water Company, Bankrupt, Appellant.

LESLIE J. AKERS, Boise, Idaho, and BARGE E. LEONARD, Yeon Building, Portland, Oregon, for T. H. Wegener, Trustee in Bankruptcy, of the Jordan Valley Farms, Bankrupt, Appellant.

McCAMANT & THOMPSON, Northwestern Bank Building, Portland, Oregon, and BRONAUGH & BRONAUGH, Northwestern Bank Building, Portland, Oregon, for the Appellee.



In the District Court of the United States for the
District of Oregon.

MORTGAGE COMPANY FOR AMERICA,
Plaintiff,

vs.

JORDAN VALLEY FARMS and JORDAN VALLEY
LAND AND WATER COMPANY,
Defendants.

Citation.

The United States of America,—ss.

To Mortgage Company for America:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City

of San Francisco, State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein you, the Mortgage Company for America is plaintiff and Jordan Valley Farms and Jordan Valley Land and Water Company are defendants, to show cause, if any there be, why the judgments, decisions and decrees in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf. [1*]

WITNESS the Honorable WM. B. GILBERT, United States Circuit Judge for the District of Oregon this 8th day of January, A. D. 1923, and of the Independence of the United States, the one hundred and forty-seventh year.

WM. B. GILBERT,
Circuit Judge.

Attest: G. H. MARSH.
Clerk.

By F. G. Buck,
Chief Deputy.

Service of the foregoing Citation and receipt of a copy thereof admitted this 8th day of January, 1923.

BRONAUGH & BRONAUGH,
Of Solicitors for Plaintiff. [2]

[Endorsed]: E—8576. Mortgage Co. for America, vs. Jordan Valley Farms. Citation. U. S. Dis-

*Page-number appearing at foot of page of original certified Transcript of Record.

trict Court District of Oregon. Filed Jan. 8, 1923.
G. H. Marsh, Clerk. [3]

In the District Court of the United States for the
District of Oregon.

July Term, 1921.

BE IT REMEMBERED, That on the 23d day of
September, 1921, there was duly filed in the District
Court of the United States for the District of Ore-
gon, a bill of complaint in words and figures as fol-
lows, to wit: [4]

In the District Court of the United States for the
District of Oregon.

IN EQUITY—No. —.

MORTGAGE COMPANY FOR AMERICA,
Plaintiff,

vs.

JORDAN VALLEY FARMS, a Corporation, and
JORDAN VALLEY LAND AND WATER
COMPANY, a Corporation,

Defendants.

Complaint.

To the Honorable Judges of the District Court of
the United States for the District of Oregon.

Mortgage Company for America, as plaintiff,
brings this its bill of complaint against the Jordan
Valley Farms, a corporation, and Jordan Valley
Land and Water Company, a corporation, as de-
fendants, and thereupon the plaintiff complains and
alleges:

I.

That the plaintiff Mortgage Company for America is a corporation duly incorporated, organized and existing under the laws of the Kingdom of the Netherlands and has its principal place of business at the Hague in said Kingdom of the Netherlands and is a citizen and resident of the Kingdom of the Netherlands and is not a citizen of the United States of America, but is an alien. That the plaintiff has complied with all of the laws of the State of Oregon regulating foreign corporations doing business in said state, and is now and at all times herein mentioned was duly qualified to do business in said State of Oregon.

II.

That the defendant Jordan Valley Farms is a corporation organized and existing under the laws of the State of Idaho and has its principal place of business at the City of Boise in said state, but has qualified to do business under the laws of the State of Oregon as a foreign corporation, and is engaged in business in the County of Malheur, State of Oregon. [5]

III.

That the defendant Jordan Valley Land and Water Company is a corporation organized and existing under the laws of the State of Nevada, and has its principal place of business at ——— in said State of Nevada, and is a citizen of the State of Nevada, but has qualified to do business under the laws of the State of Oregon as a foreign corpora-

tion, and is engaged in doing business in Malheur County, State of Oregon.

IV.

That this suit involves a civil controversy for the foreclosure of a lien held by the plaintiff upon properties belonging to the defendant corporations and situated within the State of Oregon, and all of which properties are now within the State of Oregon and within the jurisdiction of the above-entitled Court and the said civil controversy is between an alien plaintiff and citizens of the United States of America as defendants, and the amount in controversy exceeds, exclusive of interest and costs, the sum and value of three thousand dollars (\$3000.00).

V.

That on or about the 1st day of March, 1919, the plaintiff and the defendants entered into an agreement whereby the plaintiff agreed to loan to the defendants the sum of twenty-seven thousand dollars (\$27,000.00) in Gold Coin of the United States of America, and pursuant to the terms of said agreement, the plaintiff did loan said sum of money unto the defendants and for the purpose of evidencing the said loan and the agreement of the defendants to repay the same, the said defendant corporations did make, execute and deliver unto the plaintiff their certain promissory note bearing date of March 1, 1919, whereby they jointly and severally promised to pay to the order of the plaintiff, Mortgage Company for America, on the 1st day of March, 1929, the said sum of twenty-seven thousand dollars (\$27,000.00) in United States gold coin of the then

present standard of weight and fineness, with interest thereon from said date thereof, at the rate of eight per cent (8%) per annum, and that in and by the said promissory note the said defendants further agreed and promised that in case suit or action should be instituted to collect said note they would pay in addition to the costs and disbursements provided [6] by statute such sum in like gold coin as the Court might adjudge reasonable as attorney's fees to be allowed in such suit or action, and at the same time and place and as part of the same transaction said defendants executed and delivered unto the plaintiff a series of coupon interest notes for the annual installments of interest accruing upon said principal note, each of said coupon interest notes being for the sum of two thousand one hundred sixty dollars (\$2,160.00) and payable serially on the 1st day of March, beginning with the 1st day of March, 1920, and ending with the 1st day of March, 1929, and each of said notes bearing interest after maturity at the rate of eight per cent (8%) per annum.

VI.

That as security for the payment of said promissory note the said defendants agreed to assign and set over unto the plaintiff, certain promissory notes secured by mortgages given by settlers upon the lands included in the Jordan Valley Irrigation Project in Malheur County, State of Oregon, together with certificates for shares of stock of Jordan Valley Water Company, appurtenant to the lands described in the respective mortgages, and as evi-

dence of the agreement between the defendants and the plaintiff a certain memorandum of agreement was made and entered into between the plaintiff and the defendants bearing date of March 1, 1919, which memorandum of agreement was executed by the defendant corporations simultaneously with the execution of the aforesaid promissory note, which said memorandum of agreement particularly described the notes and mortgages so agreed to be transferred by the defendants to the plaintiff as well as the respective certificates of water stock, and particularly set forth the conditions under which said securities were so to be transferred to the plaintiff, and pursuant to the terms of said memorandum of agreement, the said defendants did, contemporaneously with the execution thereof, endorse, transfer and deliver unto the plaintiff the several promissory notes, mortgages and certificates of stock described in said memorandum of agreement, and in the said memorandum of agreement it was expressly provided that the defendants were to assign and set over unto the plaintiff as further security, certain notes and mortgages to be particularly described in a supplemental agreement to [7] be executed thereafter.

VII.

That in and by the said memorandum of agreement, the said defendants did covenant that they would pay their said promissory note and all installments of interest thereon promptly as the same should become due according to the tenor of said principal note and coupon notes; and that until

the indebtedness evidenced thereby should be fully paid they would pay all taxes, assessments and other charges of every nature that might be levied or assessed upon or against the said collateral securities when due and payable according to law and before the same should become delinquent, and further covenanted that they would forever warrant and defend the title to said collateral securities against the claims and demands of all persons whomsoever.

VIII.

That in and by the said memorandum of agreement, the said defendants agreed that if they should fail to pay any installment of interest becoming due and payable upon their said promissory notes, then the plaintiff might at his option at any time thereafter and while such default should continue, declare the whole of the indebtedness due to it from the parties of the first part, both principal and interest, immediately due and payable, and said defendants did further covenant and agree with the plaintiff that if the defendants should fail to pay their said promissory note or any installment of interest thereon, according to the terms thereof, and of said agreement, or should fail to observe or perform each and every covenant in said agreement contained, then the plaintiff might proceed by process of law to foreclose the lien of said collateral, and that in any suit for foreclosure as provided in said agreement, that plaintiff should be entitled to recover such sum as the

Court might adjudge reasonable for attorney's fees for maintaining such suit.

IX.

That in and by the said agreement, it was expressly provided that if any mortgagor in any of said collateral mortgages should desire to pay off his mortgage and obtain satisfaction thereof, the plaintiff would, at the request [8] of Jordan Valley Farms, accept full payment of such collateral mortgage and enter satisfaction thereof, provided said Jordan Valley Farms should assign and set over unto the plaintiff, in lieu thereof, another mortgage of equal value upon lands similarly situated under said Jordan Valley Irrigation Project.

X.

That the securities so agreed to be transferred by the defendants to the plaintiff were the property of the defendant Jordan Valley Farms, and that pursuant to the terms of said agreement, said defendant Jordan Valley Farms duly endorsed the said collateral notes and delivered same to the plaintiff and at the same time executed under the corporate seal of said defendant Jordan Valley Farms an assignment of each of the collateral mortgages or caused an assignment thereof to be executed, and delivered all of said securities together with the certificate of stock for water to the plaintiff, and thereupon the plaintiff caused each of said assignments of mortgage to be recorded in the Records of Mortgages of the County of Malheur, State of Oregon, and thereby all of said collateral

mortgages were duly assigned to the plaintiff corporation.

XI.

That on or about the 9th day of July, 1919, pursuant to the terms of said memorandum of agreement above described, the said defendants entered into a supplemental agreement with the plaintiff whereby, subject to all of the terms and conditions of said original memorandum of agreement, the said defendant corporations assigned, transferred and set over unto the plaintiff the additional notes and mortgages contemplated by the provisions of said original memorandum of agreement, and said defendant Jordan Valley Farms duly executed and delivered to the plaintiff an assignment of each of said collateral mortgages and the plaintiff caused the same to be duly recorded in the Records of Mortgages of Malheur County, State of Oregon. That in and by the said supplemental agreement, it was expressly provided that the same was to be supplemental to said agreement of March 1, 1919, and that all and singular the terms and conditions and provisions of said agreement of March [9] 1, 1919, should apply to the collateral securities described in said supplemental agreement to the same extent as though said collateral therein mentioned had actually been assigned and transferred prior to the execution of said agreement of March 1, 1919, and had been specifically described therein.

XII.

That the collateral securities so transferred and set over unto the plaintiff by the defendant cor-

porations are particularly described as follows, to wit:

(Here follows a detailed description of notes secured by mortgages on lands in Malheur County, Oregon, and certificates of stock in Jordan Valley Water Company for water appurtenant to the land described in said mortgages, the aggregate principal value of such notes being approximately \$59,997, all bearing interest at the rate of 6% per annum until maturity and 8% after maturity, interest payable annually, and principal payable in installments extending over a series of years.)

XIII.

That each and all of the aforesaid collateral securities, mortgages and certificates of stock of the Jordan Valley Water Company are now in the possession of the plaintiff corporation at the city of Portland, in the State of Oregon, and each and all thereof are now within the jurisdiction of the above-entitled court and are held by the plaintiff as security for the promissory note of the defendant corporations and are subject to the jurisdiction of the above-entitled court for the purpose of foreclosure of the lien of the plaintiff thereupon, as expressly provided in the said memorandum of agreement. [10]

XV.

That on or about the 1st day of March, 1920, interest coupon note number 1, executed by the defendants to the plaintiff for the sum of Two Thousand One Hundred Sixty Dollars (\$2160.00)

was paid and on the 1st day of March, 1921, interest coupon note number 2 for like amount of Two Thousand One Hundred Sixty Dollars (\$2160.00) became due and owing to the plaintiff from the defendants but the same has not been paid, nor any part thereof, and by reason of the default of the defendants in the payment thereof, the plaintiff has elected to declare and does declare the entire indebtedness evidenced by said promissory note for Twenty-seven Thousand Dollars (\$27,000.00), and the interest coupon notes accompanying the same, to be immediately due and payable, and there is now due and owing to the plaintiff thereupon, the sum of Two Thousand One Hundred Sixty Dollars (\$2160.00), with interest from March 1, 1921, at the rate of eight per cent (8%) per annum and the further sum of Twenty-seven Thousand Dollars (\$27,000.00) with interest from March 1, 1921, at the rate of eight per cent (8%) per annum, and by reason of default in the payment of said indebtedness, the lien of plaintiff upon all of the collateral security hereinabove described has become subject to foreclosure and plaintiff brings this, its bill of complaint, for the foreclosure thereof.

XVI.

That the defendant Jordan Valley Land and Water Company is the owner of the irrigation system known as the Jordan Valley Irrigation Project, and that the lands covered by the collateral mortgages so assigned to the plaintiff as security for said indebtedness, are all under said irrigation project and dependent upon water therefrom for

the successful cultivation of said lands and the production of crops thereupon, and if deprived of water said lands will be of little value and great loss and suffering will be caused to the settlers owning and cultivating said lands, [11] and the value of plaintiff's collateral security for said indebtedness will be greatly depreciated; that the defendant corporations are and each of them, as plaintiff verily believes, is insolvent and the defendant Jordan Valley Land and Water Company is unable to finance the operation of said Irrigation Project or to keep the same in proper operation. That the successful cultivation of said lands during the year 1922 will be in a large measure dependant upon the proper storage of water in the reservoir constructed for conserving water for said Irrigation Project, and it is of the highest importance that the said irrigation system be properly operated and cared for during the fall of 1921 and the winter next ensuing, in order that, during such period of time, water may be stored in the reservoir, but that said system cannot be properly operated because of the financial inability of said defendant corporation to finance the same, and that it is necessary for the conservation of the plaintiff's security and for the agricultural operations of the settlers upon said lands that a receiver be appointed by the Court with power and authority under the order of the Court to operate the said irrigation system and keep the same in proper repair and in active operation. That under the certificates of stock for water hereinbefore referred

to, each of said motgagors is entitled to water for the irrigation of the lands respectively above described and the defendant Jordan Valley Land and Water Company recognizes such right. That the entire irrigation system aforesaid and all the lands above described are situate in the County of Malheur and the State and District of Oregon.

XVII.

That the sum of Twenty-seven Hundred Dollars (\$2700.00) is a reasonable sum to be allowed the plaintiff as attorneys' fees for the maintenance of this suit, for the foreclosure of the lien upon the above described collateral securities.

For a second cause of suit against the defendants above named, plaintiff complains and alleges as follows: [12]

I.

Plaintiff refers to and adopts Paragraphs I, II, III, IV and XVI of the foregoing first cause of suit as a part of the allegations of this its second cause of suit, and for brevity refers to the same as though repeated and set out in full herein.

II.

That the plaintiff and the defendants entered into an agreement whereby the plaintiff agreed to loan to the defendants the sum of Fifty-five Thousand Dollars (\$55,000.00) in Gold Coin of the United States of America, and pursuant to the terms of said agreement, the plaintiff did loan said sum of money unto the defendants, and for the purpose of evidencing the said loan and the agreement of the defendants to repay the same, the said

defendant corporations did make, execute and deliver unto the plaintiff their promissory note bearing date of June 1, 1919, whereby they jointly and severally promised to pay to the order of the plaintiff Mortgage Company for America, on the 1st day of October, 1929, the sum of Fifty-five Thousand Dollars (\$55,000.00) in United States Gold Coin of the then present standard of weight and fineness, with interest thereon from said date thereof, at the rate of 8% per annum, and that in and by the said promissory note, the said defendants further agreed and promised that in case suit or action should be instituted to collect said note they would pay in addition to the costs and disbursements provided by statute, such sum in like Gold Coin as the Court might adjudge reasonable as attorneys' fees to be allowed in such suit or action, and at the same time and place and as a part of the same transaction, said defendants executed and delivered unto the plaintiff a series of coupon interest notes for the annual installments of interest accruing upon said principal note, the first of said coupon interest notes being for the sum of One Thousand Six Hundred Four and 15/100 Dollars (\$1604.15) payable January 1, 1920, and nine of said coupon interest notes being for the sum of Forty-four Hundred Dollars (\$4400.00) each, and payable serially on the 1st day of January, beginning with the 1st day of January, 1921, and ending with the [13] 1st day of January, 1929, and the eleventh of said coupon interest notes being for the sum of Thirty-three Hundred Dollars (\$3300.00)

payable October 1, 1929, and each of said coupon notes bearing interest after maturity at the rate of eight per cent (8%) per annum.

III.

That as security for the payment of said promissory note the said defendants agreed to assign and set over unto the plaintiff, certain promissory notes accrued by mortgages given by settlers upon the lands included in the Jordan Valley Irrigation Project in Malheur County, State of Oregon, together with certificates for shares of stock of Jordan Valley Water Company, appurtenant to the lands described in the respective mortgages, and as evidence of the agreement between the defendants and the plaintiff a certain memorandum of agreement was made and entered into between the plaintiff and the defendants bearing date of March 1, 1919, which memorandum of agreement was executed by the defendant corporations simultaneously with the execution of the aforesaid promissory note, which said memorandum of agreement particularly described the notes and mortgages so agreed to be transferred by the defendants to the plaintiff as well as the respective certificates of water stock, and particularly set forth the conditions under which said securities were so to be transferred to the plaintiff, and pursuant to the terms of said memorandum of agreement, the said defendants did, contemporaneously with the execution thereof, endorse, transfer and deliver unto the plaintiff the several promissory notes, mortgages and certificates of stock described in said memorandum of

agreement, and in the said memorandum of agreement it was expressly provided that the defendants were to assign and set over unto the plaintiff as further security, certain notes and mortgages to be particularly described in a supplemental agreement to be executed thereafter.

IV.

That in and by the said memorandum of agreement, the said defendants did covenant that they would pay their said promissory note and [14] all installments of interest thereon promptly as the same should become due according to the tenor of said principal note and coupon notes; and that until the indebtedness evidenced thereby should be fully paid they would pay all taxes, assessments and other charges of every nature that might be levied or assessed upon or against the said collateral securities when due and payable according to law and before the same should become delinquent, and further covenanted that they would forever warrant and defend the title to said collateral securities against the claims and demands of all persons whomsoever.

V.

That in and by the said memorandum of agreement, the said defendants agreed that if they should fail to pay any installments of interest becoming due and payable upon their said promissory notes, then the plaintiff might at his option at any time thereafter and while such default should continue, declare the whole of the indebtedness due to it from the parties of the first part, both prin-

cipal and interest immediately due and payable, and said defendants did further covenant and agree with the plaintiff that if the defendants should fail to pay their said promissory note or any installment of interest thereon, according to the terms thereof, and of said agreement, or should fail to observe or perform each and every covenant in said agreement contained, then the plaintiff might proceed by process of law to foreclose the lien of said collateral, and that in any suit for foreclosure as provided in said agreement, that plaintiff should be entitled to recover such sum as the Court might adjudge reasonable for attorney's fees for maintaining such suit.

VI.

That the securities so agreed to be transferred by the defendants to the plaintiff were the property of the defendant Jordan Valley Farms, and that pursuant to the terms of said agreement, said defendant Jordan Valley Farms duly endorsed the said collateral notes and delivered same to the plaintiff and at the same time executed under the corporate seal of said defendant Jordan Valley Farms an assignment of each of the [15] collateral mortgages or caused an assignment thereof to be executed, and delivered all of said securities together with the certificate of stock for water to the plaintiff, and thereupon the plaintiff caused each of said assignments of mortgage to be recorded in the Records of Mortgages of the County of Malheur, State of Oregon, and thereby all of said

collateral mortgages were duly assigned to the plaintiff corporation.

VII.

That on or about the 20th day of December, 1919, pursuant to the terms of said memorandum of agreement above described, the said defendants entered into a supplemental agreement with the plaintiff and again on the 1st day of March, 1920, entered into a second supplemental agreement and again on the 16th day of March, 1920, entered into a third supplemental agreement with the plaintiff, by each of which supplemental agreements the said defendant corporations herein transferred and set over unto the plaintiff additional notes and mortgages contemplated by the provisions of said original memorandum of agreement, all thereof being so assigned and transferred in compliance with and subject to all of the terms and conditions of said original memorandum of agreement, said defendant Jordan Valley Farms duly executed and delivered or caused to be executed and delivered to the plaintiff an assignment of each of said collateral mortgages, and the plaintiff caused the same to be duly recorded in the Records of Mortgages of Malheur County, State of Oregon. That in and by each of the said supplemental agreements it was expressly provided that the same was to be supplemental to said agreement of March 1, 1919, and that all and singular the terms and conditions and provisions of said agreement of March 1, 1919, should apply to the collateral securities described in each of said supplemental agreements to the

same extent as though said collateral therein mentioned had actually been assigned and transferred prior to the execution of said agreement of March 1, 1919, and had been specifically described therein.

VIII.

That the securities so transferred and set over unto the plaintiff by the defendant corporations are particularly described as follows, to wit: [16]

(Here follows a detailed description of notes secured by mortgages on lands in Malheur County, Oregon, and certificates of stock in Jordan Valley Water Company for water appurtenant to the land described in said mortgages, the aggregate principal value of such notes being approximately \$85,233.78, all bearing interest at the rate of 6% per annum until maturity and 8% after maturity, interest payable annually, and the principal payable in installments extending over a series of years.)

IX.

That each and all of the aforesaid collateral securities, mortgages and certificates of stock of the Jordan Valley Water Company are now in the possession of the plaintiff corporation at the City of Portland, in the State of Oregon, and each and all thereof are now within the jurisdiction of the above-entitled Court and are held by the plaintiff as security for the promissory note of the defendant corporations and are subject to the jurisdiction of the above-entitled court for the purpose of foreclosure of the lien of the plaintiff thereupon, as ex-

pressly provided [17] in the said memorandum of agreement.

X.

That on or about the 1st day of January, 1920, interest coupon note numbered 1, executed by the defendants to the plaintiff, in the sum of Sixteen Hundred Four and 15/100 Dollars (\$1604.15) as above alleged, was paid, and on the 1st day of January, 1921, interest coupon note numbered 2, for the sum of Forty-four Hundred Dollars (\$4400.00) became due and owing to the plaintiff from the defendants, but the same has not been paid nor any part thereof, excepting that partial payments have been made on account thereof, as follows: On January 4, 1921, \$1500.00; on February 9, 1921, \$250.00; on March 28, 1921, \$199.30; on April 15, 1921, \$456.08; and on May 14, 1921, \$146.64; said partial payments amounting in the aggregate to Two Thousand Five Hundred Fifty-two and 02/100 Dollars (\$2552.02), and leaving due and owing upon said interest coupon note number 2 the sum of One Thousand Seven Hundred Forty-two and 82/100 Dollars (\$1742.82), with interest from May 14, 1921, at the rate of eight per cent (8%) per annum, and that by reason of the default of the defendants in the payment of said interest coupon note, the plaintiff has elected to declare and does declare the entire indebtedness evidenced by said promissory note for Fifty-five Thousand Dollars (\$55,000.00) and the interest coupon notes accompanying the same to be immediately due and payable, and there is now due and owing to the

plaintiff thereupon the sum of One Thousand Seven Hundred Forty-two and 82/100 Dollars (\$1742.82), with interest from May 14, 1921, at the rate of eight per cent (8%) per annum, and the further sum of Fifty-five Thousand Dollars (\$55,000.00) with interest from January 1, 1921, at the rate of eight per cent (8%) per annum, and by reason of default in the payment of said indebtedness, the lien of plaintiff upon all of the collateral security hereinabove described has become subject to foreclosure and plaintiff brings this, its bill of complaint, for the foreclosure thereof.

XI.

That the sum of Fifty-five Hundred Dollars (\$5500.00) is a reasonable sum to be allowed the plaintiff as attorneys' fees for the maintenance [18] of this suit for the foreclosure of the lien set forth in this second cause of suit.

WHEREFORE, plaintiff prays judgment against the defendants and the decree of the Court:

1. That upon plaintiff's first cause of suit plaintiff have and recover of and from the defendants and each of them, the sum of Two Thousand One Hundred Sixty Dollars (\$2160.00), with interest from March 1, 1921, at the rate of eight per cent (8%) per annum; the sum of Twenty-nine Thousand One Hundred Sixty Dollars (\$29,160.00) with interest thereon from March 1, 1921, at the rate of eight per cent (8%) per annum, and the further sum of Twenty-seven Hundred Dollars (\$2700.00) as attorneys' fees for the foreclosure of plaintiff's lien set forth and described in said first cause of suit, and

that plaintiff have and recover of and from said defendants and each of them, upon plaintiff's second cause of suit, the sum of Fifty-six Thousand Seven Hundred Forty-two and $82/100$ Dollars (\$56,742.82), with interest from January 1, 1921, at the rate of eight per cent (8%) per annum, and the further sum of Fifty-five Hundred Dollars (\$5500.00) as attorney's fees for the foreclosure of plaintiff's lien set up in its second cause of suit, and that plaintiff have judgment for all of said sums in United States gold coin and that plaintiff have and recover its costs and disbursements herein sustained.

2. That the lien of plaintiff upon the collateral described in each of said causes of suit be foreclosed and that all of said collateral be sold in the manner provided by law, and that the proceeds of sale thereof be applied toward the satisfaction of plaintiff's judgment upon its respective causes of suit, and that if the collateral securing the note described in either cause of suit shall sell for more than enough to satisfy plaintiff's lien thereupon it be decreed that any surplus of the proceeds of said sale be applied toward the satisfaction of any deficiency due to the plaintiff upon its judgment upon its other cause of suit, and that if the entire collateral shall not sell for enough to [19] pay plaintiff's claims, plaintiff have execution against the defendants and each of them for any deficiency upon its judgment.

3. That a receiver be appointed by the Court to take charge of the property and assets of each of the defendants and in the disposition of this suit, and that said receiver be authorized to operate the

irrigation system of the defendant Jordan Valley Land and Water Company by the order of the Court.

4. That the plaintiff have such other and further relief as to the Court shall seem meet and equitable.

McCAMANT & THOMPSON and
BRONAUGH & BRONAUGH,
Attorneys for Plaintiff.

(Duly verified.)

Filed September 23, 1921. G. H. Marsh, Clerk.
[20]

AND AFTERWARDS, to wit, on Thursday, the 29th day of September, 1921, the same being the 76th judicial day of the regular July term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [21]

(Title of Court and Cause.)

Order Appointing Receiver.

It appearing that on the 23d day of September, 1921, an order was passed requiring the defendants, and each of them, to appear on the 29th day of September, 1921, at the hour of 10 A. M., then and there to show cause why a receiver should not be appointed to take charge of their respective properties; it further appearing to the Court that this order was duly and regularly served on the defendant Jordan Valley Farms, on the 26th day of Sep-

tember, 1921, and on the defendant Jordan Valley Land & Water Company on the 26th day of September, 1921, and due proof of such service having been made in this court and cause, and the defendant Jordan Valley Land & Water Company having entered a general appearance herein; and it further appearing that it is necessary to preserve the properties mortgaged, and to that end to operate the irrigation system now owned by the defendant Jordan Valley Land & Water Company;

IT IS CONSIDERED, ORDERED AND ADJUDGED that J. Humfeld be and he hereby is appointed receiver of the defendants Jordan Valley Farms and Jordan Valley Land & Water Company. The said receiver is ordered and directed to maintain the irrigation system of the defendant [22] Jordan Valley Land & Water Company and to operate the same, to the end that the mortgagors referred to in the bill of complaint, and their successors in interest, may have the water to which they are entitled, and to the end that the securities listed in the bill of complaint may be preserved and protected from destruction in value.

IT IS FURTHER ORDERED that the receiver take possession of all of the assets of the defendant corporations and proceed to liquidate the same. To this end the receiver is authorized to bring such suits and actions as shall be necessary. The receiver is directed to keep an accurate account of his receipts and disbursements, and to segregate the receipts and disbursements on behalf of the defendant Jordan Valley Farms from the receipts and

disbursements on behalf of the defendant Jordan Valley Land & Water Company. This order is without prejudice to the right of the plaintiff to retain until the further order of the Court the securities listed in the bill of complaint and alleged therein to have pledged to plaintiff.

The bond of the receiver is fixed at the sum of \$5,000.00, AND IT IS ORDERED that on the approval of the said bond by this Court the receiver shall be authorized to enter upon the discharge of his duties.

Dated September 29th, 1921.

R. S. BEAN,
Judge.

Filed September 29, 1921. G. H. Marsh, Clerk.
[23]

AND AFTERWARDS, to wit, on the 25th day of November, 1921, there was duly filed in said court an answer of defendants Jordan Valley Farms and Jordan Valley Land and Water Company, and afterwards, to wit, on February 17, 1922, there was duly filed an Amended Answer of said defendants. [24]

AND AFTERWARDS, to wit, on the 10th day of April, 1922, there was duly filed in said court an opinion in words and figures as follows, to wit: [25]

(Title of Court and Cause.)

Opinion.

Portland, Oregon, April 10, 1922,
10:00 A. M.

BEAN, D. J. (Oral):

The case of Mortgage Company for America against certain irrigation companies is a suit to foreclose a lien on certain personal property pledged or mortgaged to the plaintiff to secure the payment of two promissory notes, amounting in the aggregate to about eighty thousand dollars. These notes and the pledge were made in 1909. Each of them became due—was to become due during the year 1929, but they each provided for the payment of interest annually, and that in case of default in the payment of such interest the plaintiff might, at its election, declare the entire debt due and proceed to its collection.

Default was made in the payment of one installment of interest, and the plaintiff, exercising the right given it by the contract, declared the entire indebtedness due and brought this suit to foreclose.

The defendant companies by their answer admit the making of the loan and the mortgage and the pledge, admit there was a default in the payment of interest, but deny by reason of that default the plaintiff has a right to declare the entire indebtedness due because of the fact that in May, 1921, after the default, the plaintiff agreed in writing with the defendants to loan to them \$117,000.00 for the purpose of carrying on the work of the construction of

the irrigation project and for the payment of the interest then due for [26] the loan. The plaintiff admits that an instrument as set out in the pleadings was signed by the parties whose names appear thereto, but denies that it was a valid and binding contract on the corporation because it was never authorized by its Board of Directors.

This contract provided for the transfer to the plaintiff of the entire irrigation system of the defendants and the transfer to a trustee of a valid unincumbered title to certain land under part of the system and an assignment to him of all notes and mortgages held by and belonging to the Irrigation Company, and an assignment of all mortgages given by the purchasers of land under the system, together with its statement of the affairs of the company, and it is alleged that the defendants failed to comply with this contract and make the assignment and transfers as therein stipulated.

Now, the contract in this case was made by the executive officers of the corporation without any authority from the Board of Directors. The by-laws provided that the affairs of the corporation should be managed by a board of five directors and they shall have power to carry on any business of the company and exercise any and all of the powers conferred upon it. The by-laws also provided that the president of the corporation should be the chief executive officer and during a recess of the board should have general control and management of its affairs; but there was no express authority from the Board of Directors to the president or any execu-

tive officers to make and execute this contract, and I do not understand that under the law the executive officers of a corporation can make a valid contract to pledge and dispose of the entire assets of the concern for the purpose of securing a debt or an obligation or for [27] money borrowed. That seems to have been the holding of the Court of this State in a case from Coos County in an early day.

But, however that may be, the evidence in this case shows quite clearly that the defendant company never complied with this contract. It never transferred to the plaintiff or the trustee the property that it agreed to transfer as security for this claim. Several hundred thousand dollars of notes and mortgages that at the time the contract was made were in the possession of a banking concern at Boise, Idaho, under an escrow or trust agreement, have so remained and they are still in possession of that concern. So that I take it that under this record the defense has not made out their case because the officers had no authority to make the contract and also because, if it is a valid contract, that the company never complied with it, and therefore the plaintiff was never obligated to make the loan as provided therein; and as a consequence the plaintiff is entitled to decree foreclosing the mortgage as prayed for in its complaint.

The complaint alleges as I read it, that \$8200.00 is a reasonable attorney's fee for maintaining this suit. The only evidence given on the hearing was the testimony of Mr. Allen and Judge Littlefield, and the lowest estimate that either of them placed

upon the services was ten thousand dollars, so that the plaintiff will be entitled to a decree for the amount prayed for in the complaint, or \$8200.00, as an attorney fee.

Now, it appears from the record that pending this suit and a short time before the trial the two companies were adjudged bankrupts in the State of Idaho. Therefore I take it that the Receiver who is now in possession of the property [28] other than that embraced in the pledge should hold that property in its present condition until the rights of the Trustee in Bankruptcy, if there is one appointed, shall be determined.

Filed Jan. 10, 1923, as and for April 10, 1922. G. H. Marsh, Clerk. [29]

AND AFTERWARDS, to wit, on Thursday, the 20th day of April, 1922, the same being the 40th judicial day of the regular March term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: [30]

(Title of Court and Cause.)

Final Decree.

This cause came on to be heard upon the bill of complaint filed by the plaintiff and the answer of the defendants and the reply of the plaintiff to said answer, and the Court having heard the testimony adduced by the respective parties, and upon due

consideration thereof, the Court now being fully advised, IT IS NOW HERE ORDERED, ADJUDGED AND DECREED that the equities of the case are with the plaintiff and that the plaintiff is entitled to a decree for the relief prayed for in its said bill of complaint.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the amount now due and payable from each of the defendants to the plaintiff, upon the promissory notes pleaded in plaintiff's first cause of suit, is the sum of Thirty-one Thousand Eight Hundred Sixteen and 80/100 Dollars (\$31,816.80), of which the sum of Twenty-seven Thousand Dollars (\$27,000.00) is for the principal note and Two Thousand One Hundred Sixty Dollars (\$2,160.00) is for the past due interest coupon note, and Two Thousand Six Hundred Fifty-six and 80/100 Dollars (\$2,656.80) is for accrued interest upon the said principal note and past due interest coupon note to the date of this decree, all payable in United States Gold Coin.

That the amount due and payable from each of said defendants to the plaintiff upon the promissory notes pleaded in plaintiff's second cause of suit for principal and interest thereon is the sum of Sixty-one Thousand Nine Hundred Twelve and 70/100 Dollars (\$61,912.70), of which the sum of Fifty-five Thousand Dollars (\$55,000.00) is for the principal note and One Thousand Seven Hundred Forty-two and 82/100 Dollars (\$1,742.82) is for principal of the past due interest coupon note, Five Thousand One Hundred Sixty-nine and 88/100 (\$5,-

169.88) is for accrued and unpaid interest thereon, all payable in United States Gold Coin. [31]

That the plaintiff do now have and recover of and from said defendants, and each of them, the said several sums of money so, as aforesaid, decreed to be due and owing from them respectively to the plaintiff, together with interest upon each of said sums from this date until paid at the rate of Eight (8) per cent per annum, all in United States Gold Coin.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff has a valid and subsisting lien upon all of the collateral securities described in plaintiff's first cause of suit, and hereinafter described, superior to any right, title, interest or equity of either of the defendants, to secure the payment of all of the sums of money herein decreed to be due to the plaintiff on account of its said first cause of suit, and that the plaintiff is entitled to a decree for the foreclosure of its said lien.

That the plaintiff has a valid and subsisting lien upon all of the collateral securities described in plaintiff's second cause of suit, and hereinafter described, superior to any right, title, interest or equity of either of the defendants to secure the payment of all of the sums of money herein decreed to be due and owing to the plaintiff on account of its said second cause of suit, and that the plaintiff is entitled to a decree for the foreclosure of its said lien.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in addition to the aforesaid

sums of money so found to be due, there is now due and payable from each of said defendants to the plaintiff, under the terms and conditions of the contract or memorandum of agreement set forth in plaintiff's first cause of suit, a reasonable solicitor's fee for the foreclosure of the lien created by said contract, and that the sum of Twenty-seven Hundred Dollars (\$2,700.00) is a reasonable sum to be allowed plaintiff as such solicitor's fee, and that the plaintiff have and recover such sum of Twenty-seven Hundred Dollars (\$2,700.00), with lawful interest thereon from this date, of and from said defendants, and each of them, in addition to all other sums herein decreed to be due and owing to the plaintiff on account of its said first cause of suit.

That in addition to the aforesaid sums of money so found to be due to the plaintiff upon its second cause of suit, there is now due and payable, from each of the said defendants, to the plaintiff, under the terms [32] and conditions of said contract or memorandum of agreement set forth in plaintiff's second cause of suit, a reasonable solicitor's fee for the foreclosure of the lien created by said contract, and that the sum of Fifty-five Hundred Dollars (\$5,500.00) is a reasonable sum to be allowed the plaintiff as such solicitor's fee, and that the plaintiff have and recover such sum of Fifty-five Hundred Dollars (\$5,500.00), with lawful interest thereon from this date, of and from said defendants, and each of them, in addition to all other sums herein decreed to be due and owing to the

plaintiff on account of its said second cause of suit.

That the said defendants pay to the plaintiff, within ten (10) days from this date, all of the sums of money herein decreed to be due and payable to the plaintiff, together with plaintiff's costs and disbursements herein to be taxed by the clerk of this court, and that in default of such payment being made by said defendants, all of the collateral securities in the bill of complaint described, be sold, and the proceeds of the sale thereof applied in satisfaction of this decree as hereinafter further ordered and decreed, and that the defendants, and each of them, and all persons claiming from, through or under them, or either of them, be absolutely and forever barred and foreclosed of and from all right, title, interest and equity of redemption in and to the said collateral securities, and every part thereof, and that upon the sale thereof the title of the purchaser or purchasers respectively to the said collateral securities so sold become and be absolute without any right of redemption from such sale.

That the said collateral securities be sold in the following order and manner, to wit:

(Description of mortgages omitted in accordance with the praecipe.) [33]

And that the proceeds of the sale of such collateral securities be applied, first, to the payment of the expenses, costs and disbursements of this proceeding and said solicitor's fees, and next to the payment of the amounts decreed due upon the

promissory notes described in plaintiff's first cause of suit.

Second. That there next be sold in one lot or parcel, free and clear of all liens or claims all of those certain collateral securities mentioned in plaintiff's second cause of suit and included in the memorandum of agreement, and several agreements supplemental thereto, mentioned in said second cause of suit, which said collateral securities are more particularly described as follows, to wit:

(Description of mortgages omitted in accordance with praecipe.) [34]

And that the proceeds of the sale of all such collateral securities be applied, first, to the payment of said solicitor's fee for the foreclosure of the lien of said collateral securities described in plaintiff's second cause of suit, and next to the payment of the amounts decreed to be due and owing to the plaintiff under its second cause of suit.

(3) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if any balance of proceeds of sale of any of said property remains after the application of so much thereof as may properly be applicable to the payment of the sums decreed to be due and owing to the plaintiff, the same be paid into the Registry of this Court to abide such decree as the Court may hereafter pass in reference thereto.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if any deficiency shall be found to be due the plaintiff after exhausting the proceeds of sale of said property properly appli-

cable to the satisfaction of this Decree, the plaintiff have personal judgment and decree therefor and execution thereupon against each of said defendants.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the sale of said properties as herein decreed be made and conducted by Robert F. Maguire, Esq., Master in Chancery of this Court, who is hereby appointed to execute this Decree.

That the said Master in Chancery give public notice of time and place of said sale by previously publishing said notice once each week for four successive weeks in some newspaper of general circulation published in the county of Multnomah, in the State of Oregon.

That the plaintiff may become the purchaser at such sale, and that if the plaintiff does become such purchaser, the said Master may accept from said plaintiff, in lieu of cash payment, said plaintiff's receipt for any portion of such bid which may properly be payable to the plaintiff under this Decree. [35]

That said Master, on such sale being made, execute a certificate of purchase to each purchaser or purchasers of said properties, or any portion thereof, which certificate shall describe the property so purchased by reference to the name of the mortgagor and the mortgagee in each instance, and the book and page of the record in the County of Malheur of each mortgage so sold and the sum paid therefor, or if purchased by the plaintiff herein, the

amount of plaintiff's bid, and that the said certificate of purchase recite and decree that the purchaser therein named has become the absolute owner of all of the collateral securities covered by the purchase mentioned in such certificate.

That the sale of all said properties be made at public auction, at the Federal Building in which this Court is held, in the City of Portland, County of Multnomah, State of Oregon, at such time as the Master may designate in said public notice of sale.

That the said Master may adjourn said sale from time to time, or from week to week, or otherwise, by giving such notice as to time of such adjournment as to him shall seem reasonable, and may make said sale at the time and place to which said sale may be adjourned.

That the Court reserves the right in term time, or at chambers, to appoint another person as such Master, with like powers, in case of the death or disability to act of the Master herein designated, or in case of resignation or failure to act or removal by the Court of said Master.

That upon the sale of the properties each purchaser, other than the plaintiff, shall forthwith deposit with the said Master the entire purchase price at which such property shall be sold to him, and that every purchaser of any part of said properties, upon the execution and delivery to him of the Master's certificate of sale, shall be entitled to the immediate possession of the collateral securities so purchased by him, and that the Master in

Chancery make delivery of the collateral securities together with the certificate of sale.

Dated April 20, 1922.

R. S. BEAN,
Judge.

Filed April 20, 1922. G. H. Marsh, Clerk. [36]

AND AFTERWARDS, to wit, on the 4th day of May, 1922, there was duly filed in said court a petition of E. M. Hoover, trustee in bankruptcy of the estate of the Jordan Valley Land & Water Company, for delivery to him of certain property, in words and figures as follows, to wit: [37]

(Title of Court and Cause.)

Petition of E. M. Hoover, Trustee in Bankruptcy, for Delivery to Him by the Receiver of the Jordan Valley Land and Water Company of Certain Property.

To the Honorable, The District Court of the United States for the District of Oregon:

Your petitioner, E. M. Hoover, respectfully shows:

1. That on the 10th day of March, 1922, the defendant Jordan Valley Land & Water Company was by the District Court of the United States for the District of Idaho, Southern Division, adjudged a bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy,

and on said date an order was duly made and entered by said Court, adjudging said Jordan Valley Land & Water Company a bankrupt, as aforesaid, a full, true and correct copy of which said order is hereto attached marked Exhibit "A" and made a part hereof.

2. That thereafter your petitioner, at a meeting of the creditors of said bankrupt duly called and held, pursuant to notice, on the 17th day of April, 1922, was appointed Trustee in [38] the case pending in bankruptcy in said District Court of the United States for the District of Idaho, Southern Division, wherein said Jordan Valley Land & Water Company was adjudged a bankrupt, as aforesaid; and your petitioner thereupon accepted said trust with all the duties and obligations pertaining thereto, and thereafter, on the 18th day of April, 1922, your petitioner made and filed his bond as Trustee in said bankruptcy proceedings, which bond was duly approved by R. M. McCracken, Esq., Referee in Bankruptcy, residing at Boise, Idaho, and before which said Referee said bankruptcy proceedings were pending. That attached hereto marked Exhibit "B" and made a part hereof, is a full, true and correct copy of the bond so filed by your petitioner as such Trustee, and of the order of said R. M. McCracken, Esq., Referee in Bankruptcy, approving your petitioner's said bond.

3. That as your petitioner is informed and believes, and so alleges the fact to be, the estate of said bankrupt consists, among other things, of a

partially constructed irrigation system in Malheur County, Oregon, constructed by said bankrupt under a contract with the State of Oregon dated on or about June 21, 1918. Said irrigation system consists of a reservoir commonly known as the Antelope Reservoir, near Jordan Valley, Oregon, and of canals leading into said reservoir, and canals and laterals and other structures for distributing the water stored in said reservoir, and other waters, to, over and upon lands to be reclaimed from said irrigation system.

4. Your petitioner further alleges upon his information and belief that the said bankrupt owned at the time it was adjudged a bankrupt, as aforesaid, certain farm lands in Malheur County, Oregon, and a large number of mortgages and water contracts [39] for the sale of water rights in said irrigation system; also material, supplies, machinery, tools and equipment, used or intended to be used in the construction of said irrigation system.

5. That heretofore and on or about the month of September, 1921, as your petitioner is informed and believes, and so alleges the fact to be, one J. Humfeld was by this Honorable Court appointed Receiver in said cause at the instance of the said plaintiff, to protect the estate and property covered by plaintiff's mortgage sought to be foreclosed in said cause; but your petitioner shows that having been appointed Trustee in bankruptcy he is under the law entitled to the possession of all property, real, personal and mixed, wheresoever situated,

owned by the said bankrupt at the time it was adjudged a bankrupt, as aforesaid; and that in order to carry out the true intent and purpose of the said Bankruptcy Act, the said J. Humfeld, Special Receiver in said cause, should deliver to your petitioner the possession and control of all property of whatsoever kind in his possession or under his control as Receiver in said cause, belonging to said bankrupt.

6. Your petitioner further shows that the notes and mortgages held as collateral security by the said plaintiff under the trust deed or pledge foreclosed in the suit cannot be sold at this time at their fair and reasonable value in view of the condition of said irrigation system and the bankruptcy of the said Jordan Valley Land & Water Company, and your petitioner is not at this time, nor are the creditors which your petitioner represents, in position to bid at the sale of said securities under the decree in this cause; and in order to protect the general creditors of said bankrupt and prevent a sacrifice of said notes and mortgages and assets of said bankrupt, [40] the sale thereof should be postponed until said mortgaged assets can be sold at a price that would be fair and just to all creditors of said bankrupt; that if said securities are offered for sale without an upset price being first fixed by this Court, below which said securities shall not be sold, your petitioner verily believes, and upon his information and belief alleges the fact to be, that said securities will be sold at a great sacrifice and far below their real value and will be

bid in by plaintiff or someone in its behalf, and a deficiency judgment then demanded by the said plaintiff for a large amount, and said plaintiff will under such deficiency judgment attempt to share in the other assets of said bankrupt with the general creditors of said bankrupt.

WHEREFORE, Your petitioner prays:

1. For an order directing J. Humfeld, Receiver in this cause of the estate or part of the estate of said Jordan Valley Land & Water Company, to transfer and deliver to your petitioner the possession and control of all property, real, personal and mixed, and wheresoever situated, in his possession, either as Receiver or otherwise, belonging to the said Jordan Valley Land & Water Company on the 10th day of March, 1922.

2. For an order directing that no sale shall be had until the further order of this Court, of any of the notes, mortgages or other securities held by the said plaintiff as security for the amount adjudged to be due it in this suit; or in the event a sale thereof be permitted, that an order be made fixing an upset or fixed price below which said securities shall not be sold.

3. For such other and further relief as may be just and equitable in the premises.

(Duly verified.)

E. M. HOOVER,
RICHARDS & HAGA and
C. E. WINSTEAD,

His Solicitors,
Residence Boise, Ida. [41]

Exhibit "A."

In the District Court of the United States for the
District of Idaho, Southern Division.

ADJUDICATION.

IN BANKRUPTCY—No. 1574.

In the Matter of **JORDAN VALLEY LAND &
WATER COMPANY**, a Corporation, Bank-
rupt.

At Boise in said district, on the 10th day of
March, 1922, before the Honorable Frank S. Die-
trich, Judge of said court in bankruptcy, the peti-
tion of Bank of Jordan Valley, Oregon, and others,
that Jordan Valley Land & Water Company, a
corporation, be adjudged bankrupt within the
true intent and meaning of the acts of Congress
relating to bankruptcy, having been heard and
duly considered, the said Jordan Valley Land &
Water Company, a corporation, is hereby declared
and adjudged bankrupt accordingly.

Dated this 10th day of March, 1922.

FRANK S. DIETRICH,

Judge.

U. S. District Court, District of Idaho. Filed
Mar. 10, 1922. W. D. McReynolds, Clerk. By
Pearl E. Zanger, Deputy. [42]

Exhibit "B."**BOND OF TRUSTEE.**

No. 1574.

KNOW ALL MEN BY THESE PRESENTS, That we, E. M. Hoover of Boise, Idaho, as principal, and Boise Title and Trust Company, a corporation organized and existing under the laws of the State of Idaho, as surety, are held and firmly bound unto the United States of America in the sum of Five Thousand (\$5,000) Dollars, lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves and our heirs, executors and administrators, successors and assigns, jointly and severally, by these presents.

Signed and sealed this 18th day of April, A. D. 1922.

The condition of this obligation is such that whereas, the above-named E. M. Hoover, was on the 17th day of April, A. D. 1922, appointed trustee in the case pending in Bankruptcy in said court, wherein Jordan Valley Land and Water Company is the Bankrupt, and he, the said E. M. Hoover, has accepted said trust with all the duties and obligations pertaining thereunto,

Now, therefore, if the said E. M. Hoover, Trustee as aforesaid, shall obey such orders as said court may make in relation to said trust, and shall faithful and truly account for all the moneys, assets and effects of the estate of said bankrupt which shall

come into his hands and possession, and shall in all respects faithfully perform all his official duties as said Trustee, then this obligation to be void; otherwise to remain in full force and virtue.

E. M. HOOVER, (Seal)

Signed, sealed and delivered in presence of

W. J. ABBS.

BOISE TITLE & TRUST COMPANY. (Seal)

By S. H. HAYES,

President. (Seal)

Attest: W. J. ABBS,

Secretary. [43]

ORDER APPROVING TRUSTEE'S BOND.

Southern Division,
District of Idaho,—ss.

It appearing to the Court that E. M. Hoover of Boise, Idaho, and in said District, has been duly appointed trustee of the estate of the above-named bankrupt, and has given a bond with sureties for the faithful performance of his official duties, in the amount fixed by the creditors, to wit, in the sum of Five Thousand (\$5,000.00) Dollars, it is ordered that the said bond be, and the same is hereby, approved.

R. M. McCRACKEN,

Referee in Bankruptcy.

Filed May 4, 1922. G. H. Marsh, Clerk. [44]

AND AFTERWARDS, to wit, on the 27th day of June, 1922, there was duly filed in said court a petition of J. Humfield, Receiver, for an order allowing expenses and fixing compensation, in words and figures as follows, to wit:
[45]

(Title of Court and Cause.)

**Petition of Receiver and Order Allowing Expenses
and Fixing Compensation.**

To the Honorable CHARLES E. WOLVERTON
and the Honorable ROBERT S. BEAN, Judges
of the Above-entitled Court:

The petition of J. Humfeld respectfully avers that your petitioner was appointed receiver for the above-named defendants on the 26th of September, 1921. That at the time when the receivership order was passed Jordan Valley Land & Water Company had ceased to function and the irrigation system owned by it was liable to damage, deterioration and destruction for lack of care. Your petitioner took possession of the system and has provided the moneys necessary for its maintenance and care during all of the time which has intervened since his appointment. Your petitioner has been in receipt of no revenues and has been obliged to provide for funds necessary to maintain the irrigation system aforesaid and to take care of the miscellaneous receivership expenses. The liquid assets of the defendants are all without the state of Oregon. The [46] holders of these liquid assets, including the evidences of indebtedness due to the defendant corporations, have refused to recognize the receiver-

ship as operative outside of the State of Oregon and have therefore refused to turn over to your petitioner any of the liquid assets or any of the evidences of debt owing to the defendant corporations. That the said liquid assets and evidences of debt are all situate in the State of Idaho. That the receiver has made four trips from Portland, Oregon, to Jordan Valley for the purpose of keeping in personal touch with the irrigation system, and has also made numerous trips to the state capital for the purpose of interviewing the state engineer and avoiding, if possible, the forfeiture of the irrigation system to the State of Oregon for lack of compliance by the defendant Jordan Valley Land and Water Company with the terms and provisions of the contract with the state. That the receiver has employed competent help to remain on the ground and look after the system and has raised the funds necessary to pay the expenses of such help. That about five thousand acres of land are now under the project and had to be provided with water in order that crops could be raised during the year 1922. That about forty families were depending on irrigation in order to raise their crops. That because of the efforts of your petitioner the system has been maintained intact and the value of the farming land under the ditch has not been lost. That the land under the ditch is for the most part covered by mortgages pledged to plaintiff and for the foreclosure of which this suit is brought. That while the receivership has preserved a most valuable asset of the Jordan Valley Land & Water Company for the benefit of that

corporation and for its creditors it [47] has also been effectual to preserving the value of the lands which are pledged to plaintiff through the mortgages described in the complaint and which plaintiff has purchased at foreclosure sale held on the 23d of June. That as receiver of the Jordan Valley Land & Water Company your petitioner has incurred the following expenses:

1921.

October.

Premium on bond as receiver	\$ 12.50
Postage80
Stationery	1.65
Trips to State Engineer at Salem, to the office of the company at Boise and to the project at Jordan Valley	79.50
Telephone75
Office help during October	50.00
Salary to Chas. E. Lanning, custodian of the project, from Oct. 15th to November 30th	150.00
Labor paid to Lanning, on project	35.00
Asphaltum for covering the leaks on the roof of the building at Ruby	18.75
Stationery	1.10
Office help during November	50.00

December.

Salary of the water master of the project for the month of September	220.00
Salary of the water master for October 1st to October 15th	110.00
Repairs on the auto belonging to the project	25.14

Salary to the water master from October 15th to November 1st	37.50
Salary to the water master for the month of November	75.00
Salary to the water master for the month of December	75.00
Office help during December	50.00
Salary of Chas. E. Lanning for December (custodian of the project)	100.00
Postage	2.69
Stationery	4.50

1922.

January.

Telephone70
Trip to the Puget Sound Bridge and Dredging Co. at Seattle for a confer- ence for a sale of the project.	100.50
Postage	4.64
Stationery	98
	\$1206.70

[48]

Brought forward	\$1206.70
Trip to State Engineer at Salem	6.95
February.	
Telephone	1.10
Salary of water master at office for the month of January	150.00
Office help during January	50.00
Salary of Chas. E. Lanning, custodian of project, for month of January	100.00
Trip to Boise and to the project (10 days) ..	113.05

Telegrams	2.29
Postage	3.30
March.	
Telephone70
Salary of water master for February	150.00
Office help during February	50.00
Salary Chas E. Lanning during February..	100.00
Postage	3.00
April.	
Office help during March	50.00
Salary Chas. E. Lanning during March ...	100.00
Telephone	3.50
Labor on project, paid to Lanning	42.00
Telegrams	20.49
Trip to Jordan Valley project	162.90
May.	
Office help during April	50.00
Labor paid to Lanning	58.70
Salary Chas. E. Lanning for April	100.00
Salary Chas. E. Lanning for May	100.00
Office help during May	50.00
Labor paid for break in feeder canal	460.75
June.	
Labor on feeder canal	98.00
	\$3233.43

Your petitioner as receiver of Jordan Valley Farms has incurred the following expenses:

1921.

October.

Premium on bond as receiver	\$ 12.50
Postage80

Stationery	1.65
Trips to State Engineer at Salem, to the office of above company at Boise and to the project at Jordan Valley	79.50
	\$ 94.45

[49]

Brought forward	\$ 94.45
Office help during October	50.00
November.	
Stationery	1.05
Office help during November	50.00
Salary to water master of project, hired as help at my office, from Oct. 15—Nov. 1	37.50
Salary to water master for the month of November	75.00
Salary to water master for the month of December	75.00
December.	
Office help	50.00
Postage	2.00
1922.	
January.	
Insurance on buildings at Ruby	56.40
Stationery	2.00
February.	
Office help during January	50.00
Trip to the office at Boise and to the project at Jordan Valley (10 days)	113.05
March.	
Office help during February	50.00
Stationery	3.60

Office help during March	50.00
Office help during April	50.00
Office help during May	50.00
	\$860.05

Your petitioner has made earnest effort to interest purchasers in the property but has been greatly handicapped in that regard by the bankruptcy proceedings and by the contention of the State of Oregon that the Jordan Valley Land & Water Company had violated its contract and forfeited its rights thereunder. That the receivership has absorbed a large measure of the time of your petitioner and has subjected your petitioner to heavy burdens and responsibilities, all of which have been discharged to the best of his ability. That the irrigation system has been kept intact as a going concern only through the receivership, and the irrigation [50] system if appraised in the light of its cost or its replacement value would be worth at least a quarter of a million dollars.

WHEREFORE, your petitioner prays that this petition may be set for hearing by the Court, all parties interested being given an opportunity to be heard thereon, and that thereupon an order may be passed fixing a reasonable compensation to be paid your petitioner as receiver of Jordan Valley Farms, and also a reasonable sum to be paid your petitioner for his services as receiver of Jordan Valley Land & Water Company. That the expenses of your petitioner may also be approved as proper expenses and that by order of this Court

the plaintiff be required to pay the allowances so made to your petitioner for services and disbursements and that by the order aforesaid passed on notice to all parties the plaintiff may be allowed a lien upon the assets of the defendant corporations commensurate with the amount so paid by it, and that delivery of the assets of the defendant corporations be withheld to the defendants and to their successors in interest until the lien and claim of plaintiff, arising as aforesaid, be liquidated. Your petitioner prays that he may have such other and further relief as to the Court shall seem meet and equitable.

J. HUMFELD,
Receiver.

BRONAUGH and BRONAUGH,
McCAMANT and THOMPSON,
Attorneys for Receiver.

(Duly verified.)

Filed June 27, 1922. G. H. Marsh, Clerk. [51]

AND AFTERWARDS, to wit, on the 8th day of July, 1922, there was duly filed in said court a petition of T. H. Wegener, Trustee in Bankruptcy of the Estate of the Jordan Valley Farms, for the delivery to him of certain property, in words and figures as follows, to wit:
[52]

(Title of Court and Cause.)

**Application for Delivery of Securities and Property
Belonging to Jordan Valley Farms to Trustee
in Bankruptcy.**

Comes now T. H. Wegener, as Trustee in Bankruptcy of the Estate of Jordan Valley Farms, a corporation, bankrupt, and respectfully represents unto the court, and petitions as follows:

I. That J. Humfeld, Receiver appointed by the above-entitled court in the above-entitled proceedings, has in his possession and under his control, certain books, contracts, notes, mortgages, deeds of trust, warranty deeds, office furniture and equipment and other personal property belonging to said bankrupt, Jordan Valley Farms, a complete inventory and list thereof being on file in the above-entitled proceedings, none of which said property is covered by the lien of the mortgage or decree of foreclosure entered in the above-entitled proceeding on or about April 20th, 1922.

II. That demand has duly been made upon said J. Humfeld, Receiver as aforesaid, and the Mortgage Company for America, plaintiff in the above-entitled suit, for the return of said property and securities to the Trustee in Bankruptcy as aforesaid, but they have wholly failed and refused to deliver said property to said Trustee.

III. That your petitioner is the duly appointed, elected, qualified and acting Trustee in bankruptcy of the said Estate of Jordan Valley Farms, bank-

rupt, and is entitled to the delivery and possession of said property, and all rights therein and thereunder; and that said J. Humfeld, Receiver, and the Mortgage Company for America, plaintiff, are not entitled to the possession, control, or any rights in and to said property, or any part thereof. [53]

IV. That your petitioner makes appearance in the above-entitled proceedings, specially, and only for the purpose hereinabove specified, and not otherwise.

WHEREFORE, your petitioner respectfully prays and requests an order of this court, directing the said J. Humfeld, Receiver, and the Mortgage Company for America, plaintiff herein, to deliver and return to said T. H. Wegener, Trustee as aforesaid, all of the books, papers, personal property, and property of whatsoever kind or nature, held by them, or either of them, either as receiver, or otherwise, not specifically mentioned in the mortgage held by the plaintiff in the above-entitled proceedings and covered by the decree of the above-entitled court entered herein on or about April 20th, 1922.

And your petitioner will ever pray, etc.

BARGE E. LEONARD,
LESLIE J. AKER,

524 Idaho Building, Boise, Idaho,
Attorneys for T. H. Wegener, Trustee in Bankruptcy of Jordan Valley Farms, Bankrupt.

(Duly verified.)

Filed July 8, 1922. G. H. Marsh, Clerk. [54]

AND AFTERWARDS, to wit, on the 13th day of July, 1922, there was duly filed in said court an answer of E. M. Hoover, Trustee in Bankruptcy, to petition of J. Humfeld, receiver, for order allowing expenses and fixing compensation, in words and figures as follows, to wit:
[55]

(Title of Court and Cause.)

**Answer of E. M. Hoover, Trustee in Bankruptcy
of Jordan Valley Land and Water Company,
to Petition of J. Humfeld, Receiver.**

COMES NOW E. M. Hoover, Trustee in Bankruptcy in the matter of the estate of Jordan Valley Land and Water Company, a bankrupt, and for answer to the petition of J. Humfeld for the approval of his account as receiver and for fixing his compensation as receiver in the above-entitled cause, admits, denies and alleges:

1. That on the 10th day of March, 1922, the defendant Jordan Valley Land and Water Company was declared and adjudged a bankrupt by the District Court of the United States for the District of Idaho, Southern Division, under the Acts of Congress relating to bankruptcy, and thereafter and on or about the 17th day of April, 1922, this answering defendant E. M. Hoover was duly appointed Trustee in the matter of the estate of said Jordan Valley Land and Water Company, a bankrupt, and thereupon and on the 18th day of April, 1922, this answering defendant E. M. Hoover accepted said trust

with all the duties and obligations pertaining thereunto and filed his oath as such trustee and executed and filed his bond in the sum of \$5,000.00, which bond was duly approved on said 18th day of April, 1922, by R. M. McCracken, Esq., Referee in Bankruptcy for the Southern Division [56] of the District of Idaho and before whom said bankruptcy proceedings were pending, and this answering defendant, E. M. Hoover, ever since has been and now is the duly appointed, qualified, and acting trustee in the matter of the estate of said Jordan Valley Land and Water Company, a bankrupt.

2. Denies that said J. Humfeld was at any time appointed receiver for the above-named defendants, but this answering defendant upon his information and belief alleges that the said J. Humfeld was appointed receiver of the irrigation system of said Jordan Valley Land and Water Company for the sole purpose of operating and maintaining it pending the foreclosure of plaintiff's lien or mortgage sought to be foreclosed in this cause to the end that water might be delivered during the irrigation season of 1921, to the lands in cultivation under said irrigation system and covered by mortgages held by plaintiff, denies that said J. Humfeld had any authority or control as such Receiver, or otherwise over any of the assets, property or rights of said Jordan Valley Land and Water Company except as aforesaid, and denies that said J. Humfeld had any authority or power to negotiate for a sale of said assets or to collect or assemble the assets of said defendant or do any other act or thing than deliver

water to the lands under cultivation and embraced in the mortgages held by plaintiff as security for its claim against said Jordan Valley Land and Water Company.

3. This answering defendant is without information or knowledge as to whether the said J. Humfeld collected any revenues, maintenance charges or other charges from the persons to whom water was delivered by him or under his direction, and therefore denies said allegation in the petition, and this answering defendant further shows that if said J. Humfeld [57] operated said system at the expense alleged in his said petition and delivered water to the land owners situated thereunder without collecting any maintenance charges or any rental or other charge for such water then the said J. Humfeld was derelict in his duties as such receiver and failed to properly and efficiently perform his said duties, and the said J. Humfeld should be charged with the reasonable rental value of such water so delivered by him and be made to account therefor to this answering defendant as trustee in Bankruptcy of the estate of said Jordan Valley Land and Water Company.

4. Denies that all the liquid assets of the defendants are without the State of Oregon, but on the contrary this defendant alleges upon his information and belief that the said J. Humfeld without authority of law and without any order or authority from the court appointing him as receiver in this cause, attempted to collect and assemble the personal property and liquid assets of the said de-

endants, and made claim thereto as Receiver, and that he, the said J. Humfeld, did assemble and receive and carry away or otherwise have delivered to him a large amount of personal property and other assets of the defendant Jordan Valley Land and Water Company, and as this defendant is informed and believes and so alleges the fact to be, the said J. Humfeld still holds possession of such personal property and has failed to account therefor, and this defendant further alleges that all of such personal property should be delivered to this defendant as Trustee in Bankruptcy.

5. As to whether the said J. Humfeld has made four or any other number of trips from Portland, Oregon, to Jordan Valley for the purpose of keeping in touch with said irrigation system, or otherwise, and as to whether the said J. Humfeld has made numerous or other trips to the capital of the State of [58] Oregon, or other places, while Receiver of said irrigation system, this answering defendant has no knowledge, information or belief on the subject, and therefore denies the same; and this answering defendant further alleges that it was wholly unnecessary for the said J. Humfeld as such Receiver to make said trips or incur any expenses in connection therewith; that a competent person to operate and maintain said irrigation system could be employed without the personal presence of said J. Humfeld on the irrigation system, and that such person could operate and maintain said system in a satisfactory and efficient manner without said trips being made by said J. Humfeld, and

this defendant further alleges upon his information and belief that the said J. Humfeld did not make any of said trips in the discharge of his duties as Receiver, but as the managing agent or representative of the said plaintiff and for the purpose of inspecting the security held by plaintiff and for the purpose of inducing prospective investors to purchase the securities held by plaintiff, and the expenses so incurred by the said J. Humfeld as agent and representative of plaintiff and in looking after plaintiff's interests and business, the said J. Humfeld is now attempting to charge to said receivership instead of to the said plaintiff, and the said J. Humfeld has included, as this answering defendant is informed and believes, and so alleges the fact to be, in his expense account disbursements and salaries incurred and paid by him, if at all, in maintaining plaintiff's office in the city of Portland, and in carrying on, conducting and looking after plaintiff's business in the making of mortgage loans in the Pacific Northwest.

6. Denies that said receivership has absorbed or should have absorbed a large measure of the time of said J. Humfeld, or has subjected said J. Humfeld to heavy burdens or [59] responsibilities, but on the contrary this answering defendant alleges the fact to be that the operation of said irrigation system from the 26th day of September, 1921, involved practically no time or burden or responsibility; that the irrigation season of 1921 was substantially concluded and at an end when the said J. Humfeld was appointed receiver, and a

suitable custodian such as usually employed by irrigation companies for looking after canals and ditches during the non-irrigating season could have been employed at not to exceed \$90.00 per month; that during the winter season from November 1st to March 1st only nominal duties would be required of such custodian. That on the 10th day of March, 1922, the said Jordan Valley Land and Water Company was declared and adjudged a bankrupt as aforesaid, and thereupon the said J. Humfeld either as Receiver, or otherwise, lost all jurisdiction and control over said irrigation system, and this answering defendant upon his appointment as Trustee in said bankruptcy proceedings became entitled to the possession and control of said irrigation system and all property pretended to be held by said J. Humfeld as Receiver, or otherwise, but the said J. Humfeld has declined and refuses to surrender either the possession or control of said irrigation system or of any of said property so claimed to be held by him as Receiver to this answering defendant. That the said J. Humfeld should in no event and under no circumstances be allowed any compensation for services for himself or others employed or alleged to have been employed by him or any reimbursement for expenses incurred or alleged to have been incurred since the 10th day of March, 1922.

7. That the said J. Humfeld was appointed Receiver at his own instance and as managing agent for the said plaintiff and for the purpose of protecting the interests of said plaintiff, [60] and

the expenses of such receivership, as this answering defendant is informed and believes and so alleges the fact to be, should have been added to and included in the judgment or decree of plaintiff against the said defendants, and should have been made a lien against the securities held by plaintiff and described in its bill of complaint in this cause.

8. This answering defendant has no knowledge of the correctness of any of the items contained in plaintiff's account as set forth in his said petition, or of the necessity for incurring such or any expense, and placing its denial on that ground this answering defendant denies that the said J. Humfeld as Receiver incurred or should have incurred, or that there was any necessity for incurring any of the items of expense set forth in his said petition, and denies that said J. Humfeld is entitled to any compensation as Receiver.

E. M. HOOVER,

Trustee of the Estate of Jordan Valley Land and
Water Company, a Bankrupt.

CHARLES E. WINSTEAD,

RICHARDS & HAGA,

Attorneys for E. M. Hoover, Trustee, etc.

(Duly verified.)

Filed July 13, 1922. G. H. Marsh, Clerk. [61]

AND AFTERWARDS, to wit, on the 14th day of July, 1922, there was duly filed in said court an answer of J. Humfield, Receiver, to petition of E. M. Hoover, trustee in bankruptcy, in words and figures as follows, to wit: [62]

(Title of Court and Cause.)

Answer of J. Humfeld to Petition of E. M. Hoover.

The answer of J. Humfeld, receiver of the above-named defendants, to the petition of E. M. Hoover, avers and denies as follows:

I.

The receiver believes the allegations of paragraph I to be true.

II.

The receiver believes the allegations of paragraph II to be true.

III.

The receiver believes the allegations of paragraph III to be true.

IV.

The receiver denies each and every allegation contained in paragraph IV, except that the receiver admits that the Jordan Valley Land & Water Company was and is the owner of certain assets which have been fully disclosed to this court in the several proceedings had herein. [63]

V.

The receiver denies each and every allegation contained in the fifth paragraph of the petition,

except that the receiver admits his appointment as alleged therein.

VI.

The receiver denies each and every allegation contained in paragraph VI of the petition.

For a further and affirmative answer the receiver avers that he has performed burdensome and valuable services and has incurred large expenses for the benefit of the defendant Jordan Valley Land & Water Company and of its creditors, all of which are fully and at large set forth in the petition of the receiver praying for allowances, which is on file in this court and cause and a copy of which has been served on counsel for the said E. M. Hoover.

WHEREFORE, the receiver prays that the allowances to be made the receiver for his services and disbursements be fixed by the court as a charge on the assets of Jordan Valley Land & Water Company, and that in case plaintiff be required to pay the same plaintiff be subrogated to the lien of the receiver by reason of such payment.

J. HUMFELD,

Receiver.

BRONAUGH and BRONAUGH,

McCAMANT and THOMPSON,

Solicitors for Receiver.

(Duly verified.)

Filed July 14, 1922. G. H. Marsh, Clerk. [64]

AND AFTERWARDS, to wit, on the 14th day of July, 1922, there was duly filed in said court an answer of J. Humfeld, Receiver, to petition of T. H. Wegener, trustee in bankruptcy, in words and figures as follows, to wit: [65]

(Title of Court and Cause.)

**Answer of J. Humfeld to Petition of T. H.
Wegener.**

The answer of J. Humfeld, receiver of the above-named defendants, to the petition of T. H. Wegener, avers and denies as follows:

I.

The receiver denies each and every allegation contained in the first paragraph of the petition, except that the receiver admits that he has certain assets of inconsequential value in his possession belonging to Jordan Valley Farms, all of which have been correctly stated by the receiver in the several proceedings had in this cause.

II.

The receiver admits the allegations of paragraph II.

III.

The receiver denies the allegations of paragraph III, except that the receiver believes that petitioner is the trustee in bankruptcy of the defendant Jordan Valley Farms.

For a further and affirmative answer the receiver avers that since his appointment he has performed burdensome services which have been of great value

to the defendant Jordan Valley Farms and to its creditors, and that he has disbursed considerable sums of money for the benefit of said corporation and in accordance with the orders of Court authorizing him so to do. That the facts with reference to the services and disbursements of the receiver are fully set forth in his petition for allowance on file herein and the receiver avers that the said [66] allowances should be made a charge on all of the assets of Jordan Valley Farms, and that plaintiff should be subrogated to the lien of the receiver in case plaintiff is required to pay the said charges, and that petitioner should not be permitted to receive any of the assets of the said defendant without fully compensating the receiver for the said charges and disbursements.

WHEREFORE, the receiver prays that he may be adequately protected in the matters set forth in his further and separate answer herein, and that the petition of T. H. Wegener may be denied.

J. HUMFELD,

Receiver.

BRONAUGH and BRONAUGH,
McCAMANT and THOMPSON,

Solicitors for Receiver.

(Duly verified.)

Filed July 14, 1922. G. H. Marsh, Clerk. [67]

AND AFTERWARDS, to wit, on the 14th day of July, 1922, there was duly filed in said court an answer of T. H. Wegener, trustee in bankruptcy, to petition of J. Humfield, Receiver, for order allowing expenses and fixing compensation, in words and figures as follows, to wit:
[68]

(Title of Court and Cause.)

Answer of T. H. Wegener to Petition of J. Humfeld.

Comes now T. H. Wegener, Trustee in Bankruptcy of the Estate of Jordan Valley Farms, a bankrupt, and appearing specially herein for the purposes hereinafter set forth, makes answer to the petition of J. Humfeld for the approval of his account as Receiver, and fixing his compensation as Receiver in the above-entitled cause, and requesting that such fees allowed to him as Receiver be impressed as a lien against the property and assets now held by him belonging to the Trustees in Bankruptcy of the Estates of Jordan Valley Farms, and the Jordan Valley Land and Water Company, bankruptcy and admits, denies and alleges as follows, to wit:

I. Alleges that on the 10th day of March, 1922, the defendant, Jordan Valley Farms was duly declared and adjudged a bankrupt by the District Court of the United States for the District of Idaho, Southern Division, under the Acts of Congress relating to bankruptcy, and thereafter and on the 17th day of April, 1922, this answering peti-

tioner, T. H. Wegener, was duly appointed and elected Trustee in bankruptcy of the Estate of Jordan Valley Farms, a bankrupt, and thereupon, and on the said 17th day of April, 1922, the said T. H. Wegener accepted said trust with all the duties and obligations pertaining thereto, and filed his oath as such Trustee and executed and filed his bond in the sum of \$2,500.00, which bond was duly approved on the said 17th day of April, 1922, by R. M. McCracken, Esq., Referee in Bankruptcy for the Southern Division of the District of Idaho, before whom said bankruptcy proceedings were pending, and this answering petitioner, T. H. Wegener, ever since has been and now is the duly appointed, qualified and acting [69] Trustee in bankruptcy of the said Estate of Jordan Valley Farms, a bankrupt.

II. Alleges that J. Humfeld, Receiver as aforesaid and petitioner herein, attended the first meeting of creditors of the said Jordan Valley Farms, bankrupt, and also of the said Jordan Valley Land and Water Company, bankrupt, held at the office of R. M. McCracken, Esq., Referee in Bankruptcy, in the Empire Building, Boise, Idaho, on the said 17th day of April, 1922, and while in attendance thereat, offered and agreed to turn over to the respective Trustees in bankruptcy for the said Jordan Valley Farms and the Jordan Valley Land and Water Company, all the assets, securities and property then held by him as Receiver, which were not covered by the mortgage of the said Mortgage Company for America or held as

collateral thereto, without any reservation as to lien for Receiver's fees, or otherwise or at all.

III. That the said J. Humfeld has entirely failed, neglected and refused to turn over and deliver to the said respective Trustees in Bankruptcy any of the property or assets belonging thereto, although proper demand was made therefor, and still refuses so to do, in spite of the decision of this court, providing for the return of such assets and securities to the said bankrupt estates, and contrary to his promise and agreement made at the meeting of creditors so to do.

IV. Denies that the said J. Humfeld ever made proper application upon proper notice to the defendants hereinabove named, or otherwise or at all, for appointment as Receiver for the said defendants, or that the said J. Humfeld was ever at any time appointed Receiver for the said defendants; denies that the said Jordan Valley Land and Water Company had ceased to function, or that the irrigation system owned by it was liable to damage, deterioration and destruction for lack of care, but that the said J. Humfeld, as Trustee for said bankrupt companies, was at all times in full charge of said irrigation system prior to such receivership, and any improper handling of such project, damage thereto, [70] deterioration or destruction thereof for lack of care or otherwise, or the failure on the part of said Jordan Valley Land & Water Company to function, if any there was, was and is directly chargeable to the said J. Humfeld, Trustee for said companies, and resulted in a breach of such

trust on his part, of which he should not have been at any time permitted to take advantage of.

V. Admits that the said J. Humfeld took possession of the irrigation system of the Jordan Valley Land and Water Company, but denies, on information and belief, that he has provided the moneys necessary for its maintenance and care during any of the time that has intervened since his appointment, or otherwise or at all; and alleges that practically all the maintenance and care given to said irrigation system during the incumbency of said J. Humfeld as receiver was provided for by the settlers composing the Jordan Valley Water Users' Association, without compensation or assistance of said J. Humfeld, as receiver or otherwise. This petitioner is without information or knowledge sufficient to form a belief as to whether the said J. Humfeld collected any revenues, maintenance charges or other charges from the persons to whom water was delivered while he was in possession of said irrigation system; but your petitioner alleges that if said J. Humfeld operated said system at the expense alleged in his said petition and delivered water to the land owners situated thereunder without collecting any maintenance charges or rental or other charge for such water, then the said Humfeld was derelict in his duties and obligation as such receiver, and failed to properly and efficiently perform his said duties, and should be charged with reasonable rental value of such water so delivered by him and be made to account therefor to this petitioner and the trustee for the Jordan Valley

Land and Water Company. Your petitioner denies that the said J. Humfeld has been obliged to provide for any funds necessary for the maintenance and care of said water system or to take care of any miscellaneous receivership expenses as set forth in his petition, or otherwise or at all. [71]

VI. Denies that all the liquid assets of the defendants named are without the State of Oregon, but on the contrary, this answering petitioner alleges, upon his information and belief, that the said J. Humfeld, as agent for the Mortgage Company for America, upon the representation that he would secure and advance to the said defendant companies sufficient moneys to finish the construction of the irrigation project in question, secured possession under the guise and name as trustee for said defendant companies of all the liquid assets, securities, personal property, notes, mortgages, deeds, books, papers, contracts, of every kind and description which the said defendant companies owned or had in their possession, in addition to those securities held by him, as agent for the Mortgage Company for America, under its mortgage, and after his non-fulfillment of his obligation as such trustee, failed and neglected to return the said property and assets to the respective companies, but continued to hold the same under the guise and name of receiver of said companies without authority of the law, and without any proper order or authority of any court, and constituting the most flagrant breach of trust and violation of his obligation and duties to the *cestui que* trust; and that the said J. Humfeld still

continues to hold possession of the same, contrary to law, and in opposition to the demands and claims of the bankrupt estates hereinbefore mentioned.

VII. Denies, upon information and belief, that the said J. Humfeld made four trips from Portland, Oregon, to Jordan Valley for the purpose of keeping in personal touch with the irrigation system, or that he has also made numerous trips to the state capital for the purpose of interviewing the State Engineer and avoiding, if possible, the forfeiture of the irrigation system to the State of Oregon for lack of compliance by the defendant, Jordan Valley Land and Water Company with the terms and provisions of the contract with the state, or otherwise or at all, except as the managing agent or representative of the Mortgage Company for America he may have made some of the trips mentioned in his petition [72] for the purpose of inspecting the security held by said plaintiff and to protect the same from forfeiture, or for the purpose of inducing prospective investors to purchase the securities held by said plaintiff; and that all of such expenses, if incurred, were incurred entirely by the said J.

Humfeld in looking after plaintiff's interest and business, and are not properly chargeable as receivership expenses in this matter.

VIII. Denies that the said J. Humfeld employed any help other than one Charles Lanning to remain on the ground and look after the irrigation system, or that he raised the funds necessary to pay such expenses of such help, other than what the settlers on such project may have contributed for such purpose.

Alleges that the said J. Humfeld included in his expense account the salaries and disbursements made by him or incurred by him in maintaining the office of the Mortgage Company for America in the City of Portland, and in carrying on, conducting and looking after the extensive business of said plaintiff and his own personal interests throughout the Pacific northwest, and that none of such salaries of relatives of said J. Humfeld should be charged against the bankrupt estates, or otherwise or at all

IX. Denies that because of the efforts of J. Humfeld, the irrigation system has been maintained intact and the value of the farming land under the ditch has not been lost, or that the so-called receivership has preserved any valuable assets of the Jordan Valley Land & Water Company for the benefit of that corporation or the Jordan Valley Farms, or the creditors of either of them, or that it has been effectual in preserving the value of the lands which are pledged to plaintiff through the mortgages described in the complaint, which plaintiff purchased at a nominal price on foreclosure sale held on June 23d; but alleges that, through the pretensions he has made as to being general receiver for the said bankrupt corporations, and his failure and refusal to deliver over to them the assets and property properly belonging to the said trustees and the possession and control of said irrigation project, he has usurped the powers and duties of the two trustees in bankruptcy and has rendered them [73] powerless to act for the best interests of the creditors of the two bankrupt corporations; that the said J. Humfeld,

pretending to act on behalf of the general creditors of the two bankrupt corporations, failed to make proper legal protest against the forfeiture of said irrigation project by the State of Oregon, or take injunctive or other legal measures to prevent the same, thereby permitting an irreparable loss to the general creditors and stockholders of the two bankrupt corporations; and that the said J. Humfeld so neglected his pretended duties as receiver in possession of said irrigation system that only a nominal amount was credited against the sale of the valuable securities held by his employer the Mortgage Company for America, and now claims a large deficiency judgment against the general assets of the two corporations.

X. Denies that said J. Humfeld has made earnest effort to interest purchasers in the property but that he has been greatly handicapped in that regard by the bankruptcy proceedings, or in any other way; and denies that the receivership has absorbed a large measure of the time of said J. Humfeld, or has subjected him to heavy burdens and responsibilities, or that he has discharged any of such responsibilities to the best of his ability in any other respect than to secure as much property, money and assets for himself and his employer, the Mortgage Company of America, to the detriment of the general creditors of said two bankrupt companies and the irrigation project in general.

XI. Admits that the irrigation system, if appraised in the light of its cost or its replacement value, would be worth at least a quarter of million

of dollars if not more; and this answering petitioner alleges that due to the wrongful breach of trust on the part of said J. Humfeld, first as trustee for the two said bankrupt companies, and then in usurping the rights of a general receiver for said companies, he has destroyed all possible chance of the two bankrupt companies completing such project, thereby bringing on the forfeiture action of the State of Oregon, under which all of the assets of said two companies were attempted to be transferred to the Jordan Valley Irrigation District for a nominal sum, and thereby rendering the assets of said bankrupt companies of very [74] little value, without considerable litigation to determine the rights of the two companies thereto; and that said J. Humfeld has practically permitted the project in question to be run by itself, or with such volunteer aid as the settlers thereon may have rendered, and that deterioration, ruination and destruction has been permitted by him, while the said irrigation system has been in his possession all of which wrongful acts and neglect have brought about a situation whereby the said J. Humfeld and the said Mortgage Company for America hope to profit tremendously thereby by taking over through foreclosure proceedings and sale of the securities in his possession nearly all the lands located in said project and the irrigation system thereof, to the exclusion of the rights of the creditors of the two bankrupt corporations and the settlers of the irrigation project.

XII. That the said J. Humfeld was appointed Receiver at his own instance, and as managing agent

for the said plaintiff, for the sole purpose of protecting the interests of said plaintiff, and the expenses of such receivership, if any may be considered proper, should have been added to and included in the judgment or decree of plaintiff against the defendants, and should not be claimed as a lien against the securities held by said Humfeld, which were not covered by his mortgage and foreclosure proceedings.

XIII. This petitioner denies the correctness of the items contained in plaintiff's account as set forth in his said petition, and denies the necessity for incurring such or any expense as therein set forth, and denies that said J. Humfeld is entitled to any compensation as Receiver or otherwise or at all.

WHEREFORE, your answering petitioner respectfully prays that the said petition of J. Humfeld for allowance of Receiver's fees and expenses be denied and disallowed, and that no lien therefor may be allowed against the assets of the defendant corporations now in bankruptcy, other than those covered by the mortgage of said plaintiff and foreclosure proceedings thereon, or that such assets be withheld from the Trustees [75] in bankruptcy of said defendant corporations until such claimed lien is paid or otherwise or at all; and your petitioner further prays the Court for an order requiring the said J. Humfeld, Receiver, and the Mortgage Company for America, and all others, claiming by, through or under them, to deliver forthwith to the said T. H. Wegener, Trustee in Bankruptcy for

Jordan Valley Farms, and to E. M. Hoover, Trustee for the Jordan Valley Land & Water Company, all assets of every kind and nature whatsoever, consisting of contracts, notes, mortgages, deeds, books, papers, office furniture and equipment, maps, profiles, and other property, heretofore taken by the said J. Humfield in his possession as Trustee, a partial list of which is on file in these proceedings, as interest therein and thereto may appear; and your petitioner prays for such other and further relief in the premises as to equity may pertain.

T. H. WEGENER,

Trustee in Bankruptcy of the Estate of Jordan Valley Farms, a Bankrupt.

BARGE E. LEONARD,

LESLIE J. AKER,

Attorneys for T. H. Wegener, Trustee.

(Duly verified.)

Filed July 14, 1922. G. H. Marsh, Clerk. [76]

AND AFTERWARDS, to wit, on Friday, the 14th day of July, 1922, the same being the 10th judicial day of the regular July term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [77]

(Title of Court and Cause.)

Order on Petition of Receiver and Petitions of E. M. Hoover and T. H. Wegener, Trustees in Bankruptcy.

This cause coming on to be heard on the petition of J. Humfeld, Receiver, for the approval of his accounts and the making of allowances reasonable to be made to him for the services rendered by him and for his protection in the matter of his disbursements and his compensation, and also on the petitions of E. M. Hoover, trustee in bankruptcy of Jordan Valley Land & Water Company, and T. H. Wegener, trustee in bankruptcy of Jordan Valley Farms, and the receiver appearing by Earl C. Bronaugh and Wallace McCamant, his attorneys, E. M. Hoover, trustee in bankruptcy aforesaid, appearing by Richards & Haga, his attorneys, and T. H. Wegener, trustee in bankruptcy as aforesaid, appearing by L. J. Aker, his attorney, and the parties having reached an agreement thereon and the Court being fully advised by agreement of the parties:

IT IS CONSIDERED, ORDERED AND ADJUDGED, that the receiver be allowed the sum of \$3,500 for his services rendered as receiver of Jordan Valley Land & Water Company and \$750 for his services as receiver of Jordan Valley Farms.

IT IS FURTHER ADJUDGED, that the receiver be allowed the sum of \$3,233.43 disbursed by him as receiver of Jordan Valley Land & Water Company and the sum of \$860.05 disbursed by him as receiver of Jordan Valley Farms. [78]

IT IS FURTHER ADJUDGED, that the receiver be allowed the additional sum of \$750 for the services of his attorneys.

The plaintiff having asked for the appointment of a receiver, IT IS ORDERED, that these allowances be paid by plaintiff and that on such payment plaintiff be subrogated to the rights and lien of the receiver.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the allowances of \$750 for services and \$860.05 for disbursements made to J. Humfeld as receiver of Jordan Valley Farms be and they are charged as a lien on the assets of the said defendant, and it is adjudged that the receiver retain possession of the said assets until the allowances so made shall be paid. The receiver is permitted, however, to surrender the said assets on receipt of a bond satisfactory to him guaranteeing the payment within a reasonable time of the said allowances.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the sum of \$3500 allowed the receiver for his services and \$3233.43 for his disbursements, and the additional sum of \$750 allowed him for the services of his attorneys, be and they are charged as a lien on the assets of the defendant Jordan Valley Land & Water Company and it is adjudged that the receiver retain possession of the properties of the said defendant until the allowances so made shall be paid.

It appearing to the Court that the property which can be irrigated by the irrigation system referred

to in the pleadings and decree herein is now situate within an irrigation district known as Jordan Valley Irrigation District:

IT IS CONSIDERED, ORDERED AND ADJUDGED, that the receiver be and he is hereby authorized and permitted without expense to the estate to arrange with the said district for the care of the system, without surrender, however, of the [79] possession thereof by the receiver, the Court retaining possession of the system and of the assets of the several companies to secure the allowances so made to the receiver for his services and disbursements and for the services of his attorneys.

IT IS ORDERED, that the receiver be and he is hereby directed to turn over to the respective trustees in bankruptcy aforesaid the assets of the defendants, when the said charges herein provided for shall have been paid in full, and not otherwise.

CHAS. E. WOLVERTON,

Judge.

Dated July 14th, 1922.

Filed July 14, 1922. G. H. Marsh, Clerk. [80]

AND AFTERWARDS, to wit, on the 18th day of October, 1922, there was duly filed in said court a petition of plaintiff for order directing the Receiver to sell assets, in words and figures as follows, to wit: [81]

(Title of Court and Cause.)

**Petition of Mortgage Company for America for
Order Directing Receiver to Sell Property.**

To the Honorable CHARLES E. WOLVERTON
and ROBERT S. BEAN, Judges of the Above-
entitled court:

The above-named plaintiff, Mortgage Company for America, presents this, its petition, and shows unto the Court that pursuant to the order of the Court duly passed on July 14th, 1922, wherein the Court ordered that certain allowances be made to the Receiver for his services as receiver of the defendant corporations and for disbursements made by him as Receiver for the account of said defendant corporations in the operation of the receivership, and for attorneys' fees for the services of attorneys for the Receiver, the plaintiff did, in obedience to the provisions of said decree ordering that such allowances be paid by the plaintiff, and that on said payment plaintiff be subrogated to the rights and liens of the Receiver, make payment of all of the allowances aforesaid so made by the said order of July 14th, 1922; that the defendants have failed to pay the said allowances and that the respective trustees in bankruptcy for the defendant corporations have failed to pay the same, or any part thereof; that under the provisions of the said order of Court, the plaintiff is entitled to be reimbursed for the payment by it of such advances to the Receiver. [82]

The plaintiff therefore prays that an order of the Court be made directing the Receiver to sell all of the assets of the defendant corporations, and each of them, in his custody as Receiver, and that the proceeds of sale be applied towards the reimbursement of the plaintiff to the receiver, and his attorneys, and that such other and further order may be made in the premises as to the Court shall seem meet and equitable.

McCAMANT & THOMPSON,
BRONAUGH & BRONAUGH,
Attorneys for Plaintiff.

(Duly verified.)

Filed October 18, 1922, G. H. Marsh, Clerk. [83]

AND AFTERWARDS, to wit, on the 30th day of October, 1922, there was duly filed in said court an affidavit of E. M. Hoover, in words and figures as follows, to wit: [84]

(Title of Court and Cause.)

United States of America,
District of Idaho,
County of Ada,—ss.

Affidavit of E. M. Hoover.

E. M. Hoover, being first duly sworn, upon his oath deposes and says:

That he now is and ever since on or about the 18th day of April, 1922, has been the duly elected, qualified and acting trustee in bankruptcy of the assets and estate of the Jordan Valley Land and Water

Company, one of the defendants above named; that said Jordan Valley Land and Water Company was adjudged a bankrupt within the true intent and meaning of the Act of Congress relating to bankruptcy on the 10th day of March, 1922, by the District Court of the United States for the District of Idaho, Southern Division, and on said date an order was duly made and entered by said Court adjudging said Jordan Valley Land and Water Company a bankrupt; that thereafter and on the 17th day of April, 1922, this affiant at a meeting of the creditors of said bankrupt duly called and held pursuant to [85] notice, was appointed trustee in bankruptcy of the estate of said bankrupt; that your petitioner immediately accepted said trust with all the duties and obligations pertaining thereto, and on the 18th day of April, 1922, made and filed his bond as trustee in said bankruptcy proceedings, which bond was duly approved by R. M. McCracken, Esq., Referee in Bankruptcy, residing at Boise, Idaho, and before which referee said bankruptcy proceedings were pending; that as affiant is informed and believes and so alleges the fact to be, the estate of said bankrupt consists almost entirely, if not wholly, of an irrigation system in Malheur County, Oregon, and certain farm lands in said county and state, and equities in certain mortgages and water contracts obtained from the sale of water rights in said irrigation system; that substantially all of said property was, at the time that this affiant was appointed trustee in bankruptcy as aforesaid, claimed by one J. Humfeld, as Receiver under an

order made in the above-entitled cause; that said J. Humfeld is and was at the time, as this affiant is informed and believes and so alleges the fact to be, the managing agent of the said plaintiff, and was acting or pretending to act as receiver in aid of plaintiff's suit for foreclosure on some of said mortgages, notes and other personal property pledged to plaintiff, as this affiant is informed and believes, as security for money borrowed by the defendants.

That on or about the 14th day of July, 1922, the said J. Humfeld, Receiver, made application to this Honorable Court for the approval of his report as receiver and for an allowance of his accounts and his fees as receiver and the fees of his counsel; that this affiant as trustee in bankruptcy filed an answer to said application, to which answer [86] this affiant now begs leave to refer for a full and complete statement of the facts therein set forth and the issues made by this affiant on the said application of said receiver, and affiant makes said answer a part of this affidavit with the same force and effect as if the same were hereto attached and made a part hereof; that immediately prior to said application coming on for hearing before this Honorable Court a conference was held, as this affiant is informed and believes and so alleges the fact to be, attended by said receiver and by his counsel and by the officers and counsel of the Jordan Valley Irrigation District and by T. H. Wegener, trustee in bankruptcy of the defendant Jordan Valley Farms, and by L. J. Aker, his counsel, and by J. H.

Richards of counsel for this affiant, but this affiant was not present at said conferences and had no knowledge thereof until long after the same had been held; that this affiant is informed and believes and upon his information and belief alleges that at said conferences an effort was made by the said J. Humfeld and his counsel to effect a settlement or compromise regarding his fees and allowances so as to obviate the necessity of making proof thereof and so as to avoid a contest thereof in court; that said Jordan Valley Irrigation District being desirous of acquiring said irrigation system and the mortgages and water contracts held by said receiver, agreed with said receiver and with the others participating in said negotiations, as aforesaid, that it would pay the full amount of plaintiff's claim including the fees and charges of said receiver and his counsel and the amount stipulated to be paid in the said order made on July 14, 1922, in this cause, making in the aggregate approximately \$117,000.00, and that it would make such payment on or before the — day of December, [87] 1922, and the said receiver and the said plaintiff agreed to accept said payment in full satisfaction and discharge of all their claims against the defendants and the property and assets in the possession of said receiver, or upon which a lien was claimed by plaintiff, and said receiver in said cause, and to give said irrigation district until the — day of December, 1922, to make such payment; that because of said agreement between plaintiff and the receiver on the one hand and said

irrigation district on the other, the said plaintiff and said J. Humfeld and their counsel persuaded all parties to waive any objection to the allowance of the fees and charges of said receiver and to the approval of his accounts; that thereupon and upon the assurance that no part of said charges, fees and claims would have to be paid out of the estate of said bankrupts but would be paid by said Jordan Valley Irrigation District and that upon such payment the said irrigation system and other property not to be delivered to said irrigation district would be delivered to the respective trustees in bankruptcy, and not otherwise, counsel for said trustee waived the objections made and issues raised by this affiant in his said answer, filed as aforesaid, and consented to the allowance of the claims, charges and fees of said receiver and to his possession of the property belonging to the estate of said bankrupt, as provided in said order of July 14, 1922.

That this affiant did not learn of said order or of said compromise and settlement and of the waiver of the said answer until long after the same had been made and the same has never been approved by this affiant or by the creditors of said Jordan Valley Land and Water Company or by the said referee in bankruptcy or by the said bankruptcy court for the District of Idaho; that such attempted settlement and adjustment [88] in so far as it purported to create a prior lien upon the estate of said bankrupt in favor of plaintiff or the said receiver was and is, as this affiant is informed and

believes and so alleges the fact to be, unauthorized and void and not binding upon the estate of said bankrupt and was consented to by counsel for this affiant solely upon the assurance that said irrigation district would pay said claims and that plaintiff and said receiver would give said district until on or about the — day of December, 1922, in which to make such payment, and that such claims, fees and charges would not under any circumstances have to be paid by said bankrupt estate, and that the same would not under any circumstances result in a sacrifice of said estate or in a sale thereof to satisfy the claims of said plaintiff and said receiver.

That said irrigation district has taken up negotiations with this affiant for the purchase of the interest of said bankrupt in said irrigation system for an amount that will pay substantially the face value of the claims filed against said estate in said bankruptcy proceedings, to wit, approximately \$42,000.00, but such negotiations have not been concluded and a binding and effective contract has not as yet been entered into; that said district has taken the necessary proceedings as affiant is informed and believes and so alleges the fact to be, to issue and sell its bonds so as to pay the claims of said receiver and of said plaintiff to be paid under the said agreement entered into as aforesaid on or about July 14, 1922, and if the sale now prayed for by the plaintiff is deferred, affiant on its information and belief alleges that the said District will pay the full amount which said plaintiff and

said receiver agreed to accept in satisfaction and discharge of their said claims, fees and charges within the [89] time agreed upon as aforesaid; that plaintiff's application for a sale under said order of July 14, 1922, at this time is made, as this affiant is informed and believes, and so alleges the fact to be, at the instance and request of said irrigation district and its representatives who seek by this method to avoid the necessity of purchasing the estate and interest of said bankrupt in said irrigation system and property, and said attempted sale is for the purpose of vesting in said irrigation district title to said property without the necessity of purchasing or acquiring through negotiations with this affiant the estate which he represents and is in effect a fraud upon said bankrupt estate and upon the creditors of said bankrupt and is in violation of the agreement entered into on July 14, 1922, and upon which the said order of July 14 was based; that to permit the said sale to be made would be to assist in carrying out of an unconscionable fraud upon said bankrupt and the creditors thereof; that this affiant has no funds with which to protect said property in the event of a sale and said property will be purchased, as this affiant is informed and believes and so alleges the fact to be, at a nominal price by said irrigation district, which amount will be credited upon the amount it is to pay the said plaintiff and said receiver under said agreement of July 14, 1922, and after having acquired such interest under said receiver's sale, the said district will attempt to avoid

the payment of any sum whatsoever to this affiant or the creditors of said bankrupt, but will seek to eliminate the interest of said bankrupt estate in said property by the sale sought to be made under plaintiff's application herein.

That in order to properly protect the estate of said bankrupt and the creditors thereof, the order made as aforesaid [90] on July 14, 1922, should either be set aside and annulled and this affiant be given an opportunity to contest the fees, claims, charges and accounts of said receiver and to be heard as to the nature of the order, if any, that should be entered in the premises, or the hearing on the necessity for the issuance of an order of sale such as is now prayed for by plaintiff should be postponed and deferred until it is known whether the said irrigation district will carry out its said agreement and pay the claims and charges of plaintiff hereinbefore referred to, and in the event such payment be made, there will be no necessity for any hearing or for any order in the premises.

That relying upon the said agreement of said irrigation district and of said plaintiff and said receiver to make settlement of all of said claims in the manner hereinbefore set forth, this affiant has not heretofore taken any steps to have this order vacated, for he verily believed that said irrigation district would pay said claims as it has repeatedly assured this affiant and his attorneys that it would, and this affiant has taken no further action to secure possession of such property for he believed that upon such payment being made the property

to which he is entitled would be turned over to him by plaintiff and said receiver as provided in the said order.

E. M. HOOVER.

Subscribed and sworn to before me this 28th day of October, A. D. 1922.

[Seal]

J. L. EBERLE,

Notary Public for the State of Idaho, Residing at Boise, Idaho.

Filed October 30, 1922. G. H. Marsh, Clerk.

[91]

AND AFTERWARDS, to wit, on the 30th day of October, 1922, there was duly filed in said court an affidavit of J. H. Richards, in words and figures as follows, to wit: [92]

(Title of Court and Cause.)

Affidavit of J. H. Richards.

United States of America,
District of Idaho,
County of Ada,—ss.

I, J. H. Richards, being first duly sworn, upon my oath depose and say:

That I am an attorney at law residing at Boise, Idaho, and a member of the firm of Richards & Haga; that I attended the hearing in the above-entitled cause held on the 14th day of July, 1922, on the application of J. Humfeld, Receiver, for the approval of his accounts and the allowance of his fees and charges as receiver in said cause; that

immediately prior to the hearing in court on said matter conferences were held and negotiations carried on between the officers of and the attorneys for the Jordan Valley Irrigation District and the said plaintiff and its attorneys and the said J. Humfeld and his attorneys in which I participated and in which also T. H. Wegener, trustee in bankruptcy of the Jordan Valley Farms and L. J. Aker, his attorney, participated; that said conferences were sought by plaintiff [93] and said receiver and their attorneys for the purpose of avoiding any contest in court on the accounts, claims, fees and charges of said receiver; that it was the purpose of said irrigation district to acquire the said irrigation system and also the water contracts and mortgages covering water rights which plaintiff had foreclosed upon in this cause and sold prior to such hearing and bid in by plaintiff in satisfaction or partial satisfaction of its judgment; that it was agreed between plaintiff and said receiver and said irrigation district and its representatives that plaintiff would sell and deliver said mortgages and water contracts to said district for \$117,000.00, which was the full amount of plaintiff's claim including the fees, charges and disbursements of the receiver and the fees and charges of his attorneys and that said district should have until the — day of December, 1922, in which to make such payment; that said district desired to acquire said contracts and mortgages for the reason that they covered lands in said district and were given in payment of water rights, and said district desired to cancel said

contracts so that the bonds of the district might be issued and apportioned against said lands in payment of such water rights.

That in view of such agreement and the assurance that no action would be taken for the sale of the property of the bankrupts or the enforcement of any order fixing such fees but that all of said indebtedness to plaintiff and receiver would be paid by such district, I consented to the order made on July 14, 1922, without making any contest on behalf of said E. M. Hoover, Trustee, because under said agreement it was immaterial to the trustee and the estate of the bankrupt what allowance was made to such receiver and what order was made in the premises; that the attempt to sell the said irrigation system or the property of the bankrupt under said order at this time is in direct violation of the agreement upon which I consented to said order, and if [94] such sale be now made it will result in a sacrifice of the estate of said bankrupt and will, in my opinion, destroy all possibility of the creditors of said bankrupt receiving any pay whatever on their claims against such bankrupt; that I had no intention in consenting to said order of imperiling or jeopardizing the estate of the bankrupt for which said Hoover was trustee, but I verily believed that said agreement would be carried out in good faith and that when so carried out all interests would be protected and that as a result of such agreement a contest would be avoided and the estate of the bankrupt preserved and protected as completely as if said contest had been

made and decided in favor of the estate of said bankrupt; that since said agreement was made and from time to time until the present time the District has manifested an intention of carrying out said agreement and has carried on negotiations for the purchase of the interest and estate of E. M. Hoover, trustee in said irrigation system for a price that would pay the claims filed in bankruptcy against said estate; that I am informed and believed that the attempt to sell under the order made on July 14th is solely for the purpose of enabling said irrigation district to get title to said irrigation system and property through the receiver's sale without purchasing the interest of the trustee in bankruptcy therein through him or through the negotiations that have been carried on with that in view, and that if such sale is made the trustee in bankruptcy will be unable to protect the interest of said creditors and such sale will result in defeating their rights and leave said estate without means or assets to pay such creditors; that said district, as I am informed and believe, is selling its bonds and will soon be in condition to pay the claim of plaintiff and [95] said receiver in accordance with said agreement on which said order is based, but if said sale be made at this time it will result in a gross fraud upon the rights of the creditors in the bankruptcy proceedings.

J. H. RICHARDS.

Subscribed and sworn to before me this 28th day of October, 1922.

[Seal]

J. L. EBERLE,

Notary Public for the State of Idaho, Residing at Boise, Idaho.

Filed October 30, 1922. G. H. Marsh, Clerk.
[96]

AND AFTERWARDS, to wit, on the 30th day of October, 1922, there was duly filed in said court an affidavit and petition of Leslie J. Akers to set aside order allowing Receiver's fees, etc., in words and figures as follows, to wit: [97]

(Title of Court and Cause.)

Affidavit and Petition of Leslie J. Aker to Set Aside Order Allowing Receiver's Fees.

To the Honorable CHARLES E. WOLVERTON and ROBERT S. BEAN, Judges of the Above-entitled Court:

United States of America,
District and State of Idaho,
County of Ada,—ss.

I, Leslie J. Aker, being first duly sworn, depose and say:

That I am one of the attorneys for T. H. Wegener, Trustee in Bankruptcy of the Estate of Jordan Valley Farms, a corporation, bankrupt, and, as such attorney, voluntarily appeared in the District Court of the United States, for the District of Oregon, in the matter of the hearing upon

the petition of J. Humfeld, Receiver, for the approval of his accounts and the making of allowances for services, claimed to be rendered by him, which was set for hearing at the courtroom of said court in the Federal Building at Portland, Oregon, on the 14th day of July, 1922.

That the said T. H. Wegener, Trustee in bankruptcy, of Jordan Valley Farms, as aforesaid, and his attorneys, having previously filed a verified protest against the allowance to the said J. Humfeld, receiver, or otherwise, any compensation whatsoever, were prepared to contest any effort made upon the part of the said J. Humfeld, receiver as aforesaid, to charge as a lien, or otherwise, against the assets belonging to the Jordan Valley Farms, bankrupt, any [98] receiver's fees, expenses, or charges whatsoever. Before the said matter was called for hearing in said court, Judges Earl C. Bronaugh and Wallace McCammant, attorneys for the said J. Humfeld, receiver, proposed to Judge J. H. Richards, of counsel for the Jordan Valley Land & Water Company, bankrupt, and Judge William Morgan, of counsel for the Jordan Valley Irrigation District, appearing informally in said proceedings, as well as myself, that an effort be made to compromise the differences between the parties concerned. That the other attorneys opposed to the allowance of said receiver's fees, hereinbefore named, agreed to make such effort at compromise, and this deponent reluctantly also participated therein.

As a result of such negotiations for compromise, it was agreed in open court, before the Hon. C. E. Wolverton, District Judge, that the Jordan Valley Irrigation District would, within a reasonable time, to be agreed upon between the said district and said J. Humfeld, as receiver, and agent for the Mortgage Company for America, plaintiff in the above-entitled suit, pay to the said J. Humfeld, the lump sum of \$117,000.00 in full settlement of the above-entitled foreclosure suit and also for all charges of the said J. Humfeld for receiver's fees, attorneys' fees, and expenses; and upon the assurance of the said Judge William Morgan, appearing on behalf of the said Jordan Valley Irrigation District, as well as representatives of the Board of Directors of the said Jordan Valley Irrigation District, that were present that they would pay off said obligations in full in due course of time without cost or expense to the said bankrupt estate, or trustees in bankruptcy thereof, this deponent as attorney for T. H. Wegener, trustee in bankruptcy of Jordan Valley Farms, and Judge J. H. Richards as attorney for E. M. Hoover, trustee in bankruptcy of the Jordan Valley Land & Water Company, with the understanding, and under the conditions hereinbefore stated, that the said receiver's fees for both bankrupt companies would be paid by the said Jordan Valley Irrigation District, consented to the making and entry of the order made in the above-entitled suit under date of July 14th, 1922, subject to the approval of the creditors and the bankruptcy court. [99]

That as your deponent is informed and verily believes, the said Jordan Valley Irrigation District, has made written agreement with the said J. Humfeld, receiver and agent for the Mortgage Company for America, plaintiff, in the above-entitled suit for the payment of the whole sum of \$117,000.00 in accordance with such compromise settlement sometime during the month of December, 1922, or as soon as money may be realized upon said Irrigation District bonds, sufficient to pay the same, and that the said Jordan Valley Irrigation District, through its attorneys and representatives have assured this deponent of its ability and intention to fully carry out the terms of its agreement with the said J. Humfeld, receiver, and also with the respective trustees in bankruptcy of the Jordan Valley Farms and the Jordan Valley Land & Water Company, and that all receiver's fees, charges and expenses as set forth in that certain order of the above-entitled court, under date of July 14th, 1922, was and is to be included in such payment.

That the petition filed herein, on or about October 18th, 1922, verified by J. Humfeld, as the agent for the Mortgage Company for America, and signed by Messrs. McCammant and Thompson, and Bronaugh and Bronaugh, attorneys for the plaintiff, together with the notification of a hearing thereon, on October 23d, 1922, postponed until October 30th, 1922, was and is a complete surprise to this deponent as attorney for the trustee in bankruptcy of Jordan Valley Farms, as well as to other

parties similarly interested and participating in the compromise settlement made before the above-entitled court in July, 1922, and this deponent alleges and states, without qualification that the action taken by the attorneys for said J. Humfeld, receiver, is an absolute and unconditional breach of the conditions and terms of the compromise settlement reached in the above-entitled suit in open court before the Hon. Charles E. Wolverton, District Judge, and comprises an effort to foreclose and dispose of assets and securities belonging to the respective trustees in bankruptcy as [100] aforesaid, aggregating several hundred thousand dollars, at a forced sale whereat the said J. Humfeld, receiver, would undoubtedly be the only bidder, leaving the creditors of the two bankrupt companies without any assets or recourse whatsoever to recover their claims aggregating over \$100,000.00.

That, inasmuch as the said J. Humfeld, receiver, and agent for the Mortgage Company for America, plaintiff, have absolutely failed and refused to comply with the terms of the compromise settlement hereinbefore set forth, this deponent as representative of the trustee in bankruptcy for Jordan Valley Farms, desires upon behalf of said trustee in bankruptcy, and as representative of a majority of the creditors of Jordan Valley Farms, to abrogate such compromise settlement in the entirety, to have the order dated July 14th, 1922, which was based thereon and consented to only upon the conditions of such compromise settlement

being adhered to by all parties, set aside, vacated, and nullified, and that a rehearing be held herein upon the petition of J. Humfeld, receiver, for allowance of Receiver's fees, attorneys' fees, and expenses, as well as the petition of T. H. Wegener, trustee in bankruptcy, for the delivery and transfer from the said J. Humfeld, Receiver, to said trustee in bankruptcy of all the assets and property belonging to the said bankrupt estate of Jordan Valley Farms.

That none of the creditors of Jordan Valley Farms, bankrupt, either separately or collectively, or otherwise, have ever approved the making of such compromise settlement by its attorney or the consent granted by its attorney to the entry of the order allowing the Receiver's fees and expenses herein, or any part thereof; and that the court in which said bankruptcy proceedings are pending, to wit, the District Court of the United States, for the District of Idaho, has never approved or ratified such compromise settlement in any respect.

[101]

Wherefore, this deponent and petitioner respectfully requests the Court that the motion and petition of J. Humfeld, Receiver, for an order directing the Receiver to sell all the assets of the defendant corporations, now bankrupt, etc., be denied, and that the order dated July 14, 1922, granting and allowing such Receiver's fees and expenses be vacated, set aside and nullified.

LESLIE J. AKER.

(Duly verified.)

Filed October 30, 1922. G. H. Marsh, Clerk.
[102]

AND AFTERWARDS, to wit, on the 30th day of October, 1922, there was duly filed in said court, a petition and affidavit of T. H. Wegener to set aside order allowing Receiver's fees, in words and figures as follows, to wit: [103]

(Title of Court and Cause.)

Affidavit and Petition of T. H. Wegener to Set Aside Order Allowing Receiver's Fees.

To the Honorable CHARLES E. WOLVERTON and ROBERT S. BEAN, Judges of the Above-entitled Court:

United States of America,
District and State of Idaho,
County of Ada,—ss.

I, T. H. Wegener, being first duly sworn, depose and say:

That I am the trustee in bankruptcy of the Estate of the Jordan Valley Farms, bankrupt, and as such official was present on July 14, 1922, in the courtroom in the Federal Building during the compromise negotiations leading to the consent of the attorneys for the bankrupt companies, Jordan Valley Farms and Jordan Valley Land & Water Company, to the making and entry of the order for allowance of Receiver's fees and expenses, under date of July 14, 1922, in the above-entitled matter; and that I fully heard and under-

stood the representations and statements made by counsel for the said J. Humfeld, Receiver, to wit, Judges Earl C. Bronaugh and Wallace McCamant and also by counsel for the Jordan Valley Irrigation District to wit, Judge William Morgan; that I have read the affidavit and petition verified herein on the 28th day of October, 1922, by Leslie J. Aker, attorney for the [104] said bankrupt estate, and believe that all the facts therein stated are true.

WHEREFORE, this deponent and petitioner respectfully requests the Court that the action and petition of J. Humfeld, Receiver, for an order directing the Receiver to sell all the assets of the defendant corporations, now bankrupt, etc., be denied, and that the order dated July 14th, 1922, granting and allowing such Receiver's fees and expenses be vacated, set aside, and nullified.

T. H. WEGENER.

(Duly verified.)

Filed October 30, 1922. G. H. Marsh, Clerk.
[105]

AND AFTERWARDS, to wit, on Friday, the 3d day of November, 1922, the same being the 106th judicial day of the regular July term of court,—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [106]

(Title of Court and Cause.)

**Order on Petition of Mortgage Company for
America for Order of Sale.**

This matter regularly coming on for hearing upon the petition of the plaintiff above named, for an order authorizing J. Humfeld, Receiver, to sell the properties and assets of the defendant corporations in his custody as receiver, for the purpose of paying the allowances for the compensation and expenses of the Receiver and for the services of the Receiver's attorneys, as made by the order of this Court duly passed on the 14th day of July, 1922, and at the same time there comes on for hearing the petition of T. H. Wegener, trustee in bankruptcy of the estate of the defendant Jordan Valley Farms, for an order vacating and setting aside the said order of this Court passed July 14, 1922, and the Court having duly considered this matter;

IT IS NOW HERE ORDERED, ADJUDGED AND DECREED that the petition of the said T. H. Wegener be and the same is denied; and that the petition of the plaintiff be and the same is hereby allowed, and that the said Receiver proceed to sell at public auction to the highest bidder for cash, all of the properties and assets of the said defendants Jordan Valley Farms and Jordan Valley Land & Water Company, and particularly the irrigation system of the said Jordan Valley [107] Land & Water Company, known as the Jordan Valley Project, including all reservoirs, dams,

headgates, canals, ditches, flumes, gates, weirs, rights of way, lands, buildings and all other property of every kind and nature constituting a part of the said Jordan Valley Irrigation Project or to be used in connection therewith.

And it duly appearing to the Court from the petition of the plaintiff that the plaintiff, pursuant to said order of July 14, 1922, has paid to the Receiver, and the Receiver's attorneys, the allowances so made by said order of July 14, 1922, and by the terms of said order has become subrogated to the rights of the Receiver and his attorneys;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff may become a purchaser at the Receiver's sale of said assets, and that the proceeds of sale after payment of the expenses of making the sale be paid to the plaintiff to reimburse it for the payment made by it of the allowances made to the Receiver and his attorneys by the order aforesaid; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the receiver give notice of such sale by publication thereof once each week for four (4) successive weeks, in some weekly newspaper of general circulation in Malheur County, State of Oregon, and that said sale be made not less than thirty (30) days after the first publication of such notice of sale.

Dated Nov. 3d, 1922.

R. S. BEAN,
Judge.

Filed November 3, 1922. G. H. Marsh, Clerk
[108]

AND AFTERWARDS, to wit, on the 8th day of January, 1923, there was duly filed in said court a petition for appeal by E. M. Hoover, trustee in bankruptcy of the estate of Jordan Valley Land & Water Company, and by T. H. Wegener, trustee in bankruptcy of the estate of the Jordan Valley Farms, in words and figures as follows, to wit: [109]

(Title of Court and Cause.)

Petition for Appeal of E. M. Hoover and T. H. Wegener.

COME NOW E. M. Hoover, as trustee in bankruptcy of the estate of the Jordan Valley Land and Water Company, a bankrupt, and T. H. Wegener, as trustee in bankruptcy of the estate of the Jordan Valley Farms, a bankrupt, and, conceiving themselves aggrieved by the orders and decisions hereinafter described, to wit:

(a) That certain order made in the above-entitled cause on or about the 14th day of July, 1922, fixing and determining the compensation of J. Humfeld as Receiver in said cause and the compensation of his counsel, and approving and allowing the account of said J. Humfeld as such Receiver, and ordering and directing that the amount so fixed, determined and allowed as fees for said Receiver and his counsel and the amount of his disbursements as approved

and allowed by said [110] order should be a lien on the assets of the said defendants Jordan Valley Land and Water Company and Jordan Valley Farms, and ordering and directing that the said J. Humfeld as Receiver should retain possession of the property and assets of said bankrupts until the said charges, fees and allowances are paid, and providing further that upon payment of such fees, charges and allowances by the plaintiff the said plaintiff should be subrogated to the lien created or attempted to be created by said order of July 14, 1922;

(b) That certain order made on or about the 3d day of November, 1922, in the above-entitled cause, wherein and whereby it was ordered, adjudged and decreed that the said J. Humfeld as Receiver in said cause should proceed to notice for sale and sell all the assets of the said bankrupts for the payment of the fees, charges and allowances fixed, determined and allowed by the said order of July 14, 1922, hereinbefore referred to, and which said order of November 3, 1922, overruled and denied the petitions, applications and requests of your petitioners to vacate and set aside the said order of July 14, 1922, and to defer making any order in this cause authorizing or permitting a sale of the assets of said bankrupts by the said J. Humfeld, Receiver, or under or pursuant to the said order of July 14, 1922:

(c) The decision of this Court made on or about the 14th day of July, 1922, denying the petitions of your petitioners to require the said J. Humfeld as Receiver in said cause to turn over to your petition-

ers respectively all assets of whatsoever kind in his possession belonging to the estate of the said bankrupts, and in ordering and permitting the said Receiver to [111] retain possession of such assets, or any of them, until his fees and compensation as fixed and allowed by the said order of July 14, 1922, are paid and discharged;

Hereby appeal from said orders, decisions and decrees so made and entered as aforesaid to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and your petitioners respectfully petition this Honorable Court to allow said appeal, and your petitioners further show:

1. That this cause was commenced on or about the 23d day of September, 1921, for the foreclosure by plaintiff of a lien in favor of said plaintiff upon certain securities pledged with plaintiff as collateral for an indebtedness from the said defendants to the said plaintiff, and that on or about the 29th day of September, 1921, upon plaintiff's application the said J. Humfeld was appointed Receiver of the said defendants in aid of said foreclosure, and as your petitioners are informed and believe, for the purpose of conserving and protecting the farm mortgages constituting the collateral above referred to by maintaining and operating the irrigation system through which water was delivered for the irrigation of the farms covered by such mortgages.

2. That on the 10th day of March, 1922, the defendant Jordan Valley Land and Water Company

was declared and adjudged a bankrupt by the District Court of the United States for the District of Idaho, Southern Division, under the Acts of Congress relating to bankruptcy, and thereafter and on or about the 17th day of April, 1922, your petitioner, E. M. Hoover, was duly appointed trustee in bankruptcy of the estate of said bankrupt, and thereafter and on the 18th day of April, 1922, the said [112] E. M. Hoover accepted said trust and executed and filed his bond in the sum of \$5,000, which was duly approved on said 18th day of April, 1922, by the referee in bankruptcy for said District and Division, and said E. M. Hoover also filed his oath as such trustee.

3. That the said Jordan Valley Farms was on or about the 11th day of March, 1922, duly declared and adjudged a bankrupt by the District Court of the United States for the District of Idaho, Southern Division, under the Acts of Congress relating to bankruptcy, and thereafter and on or about the — day of April, 1922, your petitioner, T. H. Wegener was duly appointed trustee in bankruptcy of the estate of said Jordan Valley Farms, and he thereupon immediately qualified as such trustee by taking and filing his oath and executing the bond required, which was approved by the Referee in bankruptcy for said District and Division.

4. That thereafter and on or about the 20th day of April, 1922, a decree was made and entered in this cause in favor of the plaintiff and against the said defendants, which decree was entered after this Court had been advised of the fact that the said

defendants had been adjudged and declared bankrupts, as aforesaid by the District Court of the United States for the District of Idaho, Southern Division.

5. That thereafter your petitioners filed in this cause their petitions for delivery to them by the said J. Humfeld, Receiver, of all assets belonging to said bankrupts, respectively, except the mortgages held as collateral by plaintiff, which mortgages are particularly described in the decree so made and entered as aforesaid. [113]

6. That on the 14th day of July, 1922, there came on for hearing before this Honorable Court in this cause the application of said J. Humfeld for the allowance of his fees and compensation as such Receiver and for the approval of his account as such Receiver, and for the allowance of the fees of his counsel and attorneys, and also the petitions of your petitioners for the delivery to them of the possession of the property and assets of said bankrupts in the possession of said Receiver; that at the time of said hearing or immediately prior thereto the said plaintiff and the said J. Humfeld as Receiver and their solicitors in this cause entered into an agreement with the Jordan Valley Irrigation District wherein and whereby said District agreed to pay an amount agreed upon as fees and compensation for the Receiver and his counsel and the amount claimed by plaintiff as due from said defendants under the decree above referred to, and it was agreed that upon payment of said sums the said Receiver would surrender posses-

sion to your petitioners of the assets claimed by your petitioners as trustees in bankruptcy, and upon the assurance that such sums would be paid by said Jordan Valley Irrigation District and such agreement carried out in good faith, counsel for your petitioners consented, but without authority from or knowledge thereof by the creditors represented by your petitioners, to the allowance of said fees and compensation of the Receiver and his counsel, and to the approval of the account of said Receiver, all of which is more particularly set forth in the affidavits of your petitioners and J. H. Richards and Leslie J. Aker filed herein on or about the 30th day of October, 1922. [114]

7. That for the reasons set forth in the said affidavits above referred to the said Jordan Valley Irrigation District has not paid the said sums so allowed said Receiver and his counsel, and thereafter and on or about the 3d day of November, this Court entered an order herein authorizing and directing the said Receiver to sell all assets whether in his possession or not belonging to said bankrupts or to your petitioners as trustees of the estates of said bankrupts for the purpose of paying the fees and allowances approved and allowed under the said order of July 14, 1922, notwithstanding your petitioners protested that the making of such order would be a fraud upon the creditors of said bankrupts represented by your petitioners, and the said J. Humfeld, Receiver, is now advertising all the assets of said bankrupts for sale pursuant to said order of November 3, 1922, at 10 A. M. on the

10th day of January, 1922, at the front door of the courthouse of Malheur County, Oregon, at Vale in said county and state, including over 2,000 acres of land and other assets having no relation to the irrigation system which said Receiver was appointed to maintain and operate during the pendency of this cause, which sale is made in violation of the agreement upon which the order of July 14, 1922, was based and in violation of the terms upon which counsel for your petitioners consented to the allowance of the fees claimed by said Receiver and his counsel and the allowance of the disbursements claimed to have been made by said Receiver.

8. That on the 27th day of November, 1922, at a meeting of the creditors of the said Jordan Valley Land and Water Company duly called by the Referee in Bankruptcy it was unanimously ordered that the pretended stipulation referred to in the said order of July 14, 1922, as being made on behalf of [115] E. M. Hoover, as Trustee in Bankruptcy of said bankrupt, be annulled, repudiated, canceled and set aside, and as having been entered into without the consent, knowledge, approval or direction of said trustee and of said creditors; and it was further ordered and directed an appeal be taken in this cause from the orders and decisions hereinbefore referred to, and on the 2d day of January, 1923, at a meeting of the creditors of the said Jordan Valley Farms duly called by the Referee in Bankruptcy it was ordered that an appeal be likewise

taken by the Trustee in Bankruptcy of the said Jordan Valley Farms.

9. That if said sale is permitted to be made your petitioners will be remediless in the premises for all assets belonging to said bankrupts are being advertised for sale by said J. Humfeld, Receiver, and your petitioners have no funds with which to protect their interest in said property, and the said J. Humfeld and one J. L. McAllister, Assistant Secretary of the Desert Land Board of the State of Oregon, and the said Jordan Valley Irrigation District are confederating and conspiring together to sell the said assets at a nominal sum to said Jordan Valley Irrigation District, and upon such sale having been made and confirmed, the said District will pay to said plaintiff, or to said J. Humfeld, the amount agreed upon immediately prior to the making of said order of July 14, 1922, and this course and procedure is being taken by the said Receiver and by the said District and by the said J. L. McAllister for the purpose of defeating the creditors of the said bankrupts represented by your petitioners and so that said Jordan Valley Irrigation District may acquire title to said irrigation system for less than its real value and for less than it would have to pay therefor if said Receiver's sale were not held, all of which more fully appears from the affidavits filed as aforesaid [116] on October 30, 1922; that the said J. L. McAllister is Assistant Secretary of the Desert Land Board of the State of Oregon and as such pretends to be directing and advising the said Jordan Valley Irrigation District

relative to the purchase of said irrigation system and the issuance of bonds by said District for the payment of the purchase price.

WHEREFORE, your petitioners pray that this appeal may be allowed from the said decisions, orders and decrees, and that citation issue as provided by law, and for supersedeas pending such appeal, and your petitioners tender bond in such amount as the Court may require for such purpose, and for such other relief as may be meet and proper under the circumstances.

E. M. HOOVER,
As Trustee of Jordan Valley Land and Water Co.,
a Bankrupt.

By RICHARDS & HAGA and
CHARLES E. WINSTEAD,
His Solicitors,
Residence, Boise, Idaho.

T. H. WEGENER,
As Trustee in Bankruptcy of Jordan Valley Farms,
Bankrupt.

By LESLIE J. AKER and
BARGE E. LEONARD,
His Solicitors,
Residence, Boise, Idaho.

Filed January 8, 1923. G. H. Marsh, Clerk.

AND AFTERWARDS, to wit, on the 8th day of January, 1923, there was duly filed in said court an assignment of errors, in words and figures as follows, to wit: [118]

(Title of Court and Cause.)

Assignment of Errors.

COME NOW E. M. Hoover, Trustee in Bankruptcy of the estate of Jordan Valley Land & Water Company, a bankrupt, and T. H. Wegener, Trustee in Bankruptcy of Jordan Valley Farms, a bankrupt, and having presented an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the orders, decisions and decrees made and entered on or about the 14th day of July, 1922, and on or about the 3d day of November, 1922, say that said orders, decisions and decrees are erroneous and unjust to your petitioners as Trustees in bankruptcy of the estates of said defendants, and particularly in this:

1. Because the Court erred in ordering, directing and providing in the said order of July 14, 1922, that the said plaintiff or J. Humfeld as Receiver for said defendants in aid of plaintiff's foreclosure shall retain possession of all assets belonging to the estates of said bankrupts until his fees and compensation and the fees of his counsel and allowances made on account of disbursements have been fully paid and satisfied. [119]

2. Because the Court erred in holding and deciding in said order of July 14, 1922, that plaintiff

or J. Humfeld as Receiver in said cause, had a lien upon all assets of the said bankrupts prior and superior to the claim or title of your petitioners as trustees in bankruptcy of the estates of said bankrupts, and that said Receiver or the said plaintiff could hold and retain all of such assets until said lien had been paid or discharged.

3. Because the Court erred in making any allowance for fees or compensation to said Receiver or to his counsel, and in approving the claims and accounts of said Receiver without hearing any evidence and without any information as to the reasonableness thereof, or the value of the services of either the said Receiver or his counsel, or as to the correctness of said accounts.

4. Because said order is based in part if not entirely upon an assumed consent or stipulation of counsel for your petitioners, who were without authority to make any agreement, stipulation or consent that would bind the creditors of the said Jordan Valley Land & Water Company and the said Jordan Valley Farms, represented by your petitioners as Trustees in Bankruptcy of the estates of said bankrupts.

5. Because the Court erred in not granting the petition of your petitioners praying and petitioning that the said J. Humfeld as Receiver in said cause, be required to turn over and deliver to your petitioners all the assets in his possession as such Receiver, or otherwise, belonging to the said Bankrupts.

6. Because the Court erred in making and entering the order dated on or about the 3d day of November, 1922, directing or authorizing the said J. Humfeld as Receiver, to sell all the assets of the said Bankrupts to satisfy his alleged lien for the [120] amount claimed to be due him under the said order of July 14, 1922, for his alleged services and for the services of his counsel and on account of alleged disbursements.

7. Because the Court erred in holding and deciding that the showing made and proof submitted on or about the 30th day of October, 1922, in this cause, against the making of the order dated November 3, 1922, was insufficient and inadequate to prevent the sale of the said property to satisfy said alleged lien in favor of said Receiver.

8. Because the Court erred in not vacating and setting aside the said order of July 14, 1922, in view of the showing made and proof submitted at the hearing held on or about the 30th day of October, 1922, in said cause.

9. Because the Court erred in not holding and deciding that your petitioners and their counsel and solicitors were without power or authority under the Bankruptcy Act without first having obtained the approval of the creditors of said bankrupts and their consent thereto, to enter into any agreement such as is referred to in the said order of July 14, 1922.

10. Because the Court erred in making the order of July 14, 1922, fixing the compensation of the Receiver and his counsel and allowing and approv-

ing the accounts of said Receiver, without any proof or evidence either as to the extent or nature of the services rendered by said Receiver and his counsel or the reasonable value thereof, or as to the correctness of said accounts or as to whether such accounts were rendered in connection with a proper discharge of the duties of such Receiver, but said order was apparently entered and based upon the consent of counsel for the trustees in bankruptcy, which in turn was based upon an agreement between the Receiver and said plaintiff and the Jordan Valley Irrigation District that the latter would pay all such charge [121] and expenses, and that the same would not become a claim or charge against the estate of said bankrupts; that said plaintiff and the receiver and the said Jordan Valley Irrigation District are now conspiring and confederating together not to carry out said agreement but to defraud the creditors of said bankrupts by selling all the assets of whatsoever kind and nature of said bankrupts to pay the amounts so fixed and allowed by the said order of July 14, 1922, which said claims have never been approved by the bankruptcy court or the creditors of said bankrupts or the referee in bankruptcy, but have been expressly repudiated by said creditors and referee in bankruptcy since the making of the order of November 3, 1922.

11. That the amount allowed by said order of July 14, 1922, to said Receiver and his counsel and the allowances made the Receiver on account of disbursements are excessive and exorbitant and are

grossly in excess of the reasonable value of the services rendered by the Receiver and his counsel, and the disbursements of the Receiver allowed by said order are excessive and exorbitant and were not incurred in the reasonable discharge of the duties of said Receiver.

WHEREFORE These petitioners and appellants pray that the order dated on or about July 14, 1922, be annulled and set aside, and that the order dated on or about the 3d day of November, 1922, be annulled and set aside, and that the District Court be directed to grant the petitions of your petitioners praying that the said J. Humfeld, Receiver in said cause, be ordered and directed to turn over and deliver to your petitioners all the assets in his possession belonging to the estates of the said Bankrupts.

RICHARDS & HAGA,
CHARLES E. WINSTEAD,

Solicitors for E. M. Hoover, as Trustee in Bankruptcy of Jordan Valley Land & Water Co., a Bankrupt.

LESLIE J. AKER,
BARGE E. LEONARD,

Solicitors for T. H. Wegener, Trustee in Bankruptcy of Jordan Valley Farms, a Bankrupt.

Filed January 8, 1923. G. H. Marsh, Clerk.
[122]

AND AFTERWARDS, to wit, on the 8th day of January, 1923, there was duly filed in said court an order by the United States Circuit Judge for the Ninth Circuit allowing appeal, in words and figures as follows, to wit: [123]

(Title of Court and Cause.)

Order Allowing Appeal.

And now, to wit, on this 8th day of January, 1923, it is ordered that the petition for appeal in the above-entitled cause by the trustees in bankruptcy of the defendants above named be granted, and that the appeal be allowed as prayed for in the petition for appeal, such appeal to operate as a supersedeas upon the petitioners' filing a bond in the sum of \$1000.00 with sufficient sureties conditioned as required by law.

WM. B. GILBERT,
Circuit Judge.

Filed January 8, 1923. G. H. Marsh, Clerk.
[124]

AND AFTERWARDS, to wit, on the 8th day of January, 1923, there was duly filed in said court a bond on appeal, in words and figures as follows, to wit: [125]

(Title of Court and Cause.)

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS,
That we, E. M. Hoover as trustee of the estate of

Jordan Valley Land and Water Company a bankrupt, and T. H. Wegener, as trustee of the estate of Jordan Valley Farms, a bankrupt, as principals, and the American Surety Company of New York, a corporation organized under the laws of the State of New York, as surety, are held and firmly bound unto the plaintiff above-named in the just and full sum of one thousand (\$1,000.00) dollars for the payment of which well and truly to be made we bind ourselves and each of us, and our and each of our successors and assigns jointly and severally by these presents.

Sealed with our seals and dated this 8th day of January in the year of our Lord one thousand nine hundred twenty-three.

The condition of this obligation is such that, whereas, the above-named E. M. Hoover, trustee of the estate of the Jordan Valley Land and Water Company, a bankrupt, and T. H. Wegener, as trustee of the estate of the Jordan Valley Farms, a bankrupt, the said principals, have prosecuted an appeal [126] to the United States Circuit Court of Appeals for the Ninth Circuit from certain orders made and entered in said cause on or about the 14th day of July, 1922, and the 3d day of November, 1922, in the United States District Court for the District of Oregon, as more fully appears from the petition for an appeal in said cause, and from the assignment of errors filed in connection with said petition;

NOW, THEREFORE, if the above-named principals E. M. Hoover, trustee of the estate of the

Jordan Valley Land and Water Company, a bankrupt, and the said T. H. Wegener, as trustee of the estate of Jordan Valley Farms, a bankrupt, shall prosecute their said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise the same shall be and remain in full force and virtue.

IN WITNESS WHEREOF, the said principals have hereunto set their hands and seals and the said surety has caused its name to be hereunto subscribed by its duly authorized officers, and its corporate seal affixed, the day and year first above written.

E. M. HOOVER,

As Trustee of the Estate of Jordan Valley Land and Water Company, a Bankrupt.

T. H. WEGENER,

As Trustee of the Estate of Jordan Valley Farms, a Bankrupt.

AMERICAN SURETY COMPANY OF
NEW YORK.

By W. A. KING,

Resident Vice-President.

W. A. KING, Agent.

[Seal of American Surety Co.]

Attest: E. LIEMAN,

Resident Asst. Secretary. [127]

The foregoing bond is hereby approved to operate as a supersedeas and all proceedings in said cause under the orders appealed from, or either of them,

by plaintiff, or by J. Humfield, Receiver, are hereby stayed until the further order of the court.

Dated this eighth day of January, 1923.

WM. B. GILBERT,
Circuit Judge.

Service of a copy of the foregoing bond and order is hereby accepted and admitted this 8th day of January, 1923, at Portland, Oregon.

BRONAUGH & BRONAUGH,
Of Attorneys for Mortgage Company for America,
Plaintiff.

Filed January 8, 1923. G. H. Marsh, Clerk.
[128]

AND AFTERWARDS, to wit, on the 8th day of January, 1923, there was duly filed in said court a praecipe for transcript, in words and figures as follows, to wit: [129]

(Title of Court and Cause.)

Praecipe for Transcript on Appeal.

To G. H. Marsh, Clerk of the Above-entitled Court:

You will please prepare the record on the appeal of E. M. Hoover as trustee of the Jordan Valley Land and Water Company, a bankrupt, and T. H. Wegener as trustee of the Jordan Valley Farms, a bankrupt, taken in the above-entitled cause from the orders made and entered therein on or about the 14th day of July, 1922, and the 3d day of November, 1922, such record to consist of the following pleadings, excerpts from pleadings, documents and papers:

1. Paragraphs I to XI, inclusive of the bill of complaint, and the first general paragraph of paragraph XII ending with the word "to-wit," but in lieu of subparagraphs 1 to 19, inclusive, insert the following: "(Here follows a detailed description of notes secured by mortgages on lands in Malheur County, Oregon, and certificates of stock in Jordan Valley Water Company for water appurtenant to the land described in said mortgages, the aggregate principal value of such notes being approximately \$59,997, all bearing interest at the rate of 6% per annum until maturity and 8% after maturity, interest [130] payable annually, and the principal payable in installments extending over a series of years)"; include paragraph XIII, but omit paragraph XIV, include paragraphs XV, XVI and XVIII, also all of the second cause of action except subparagraphs 1 to 16, inclusive, of paragraph VIII, and in lieu of subparagraphs 1 to 16 insert the following: "Here follows a detailed description of notes secured by mortgages on lands in Malheur County, Oregon, and certificates of stock in Jordan Valley Water Company for water appurtenant to the land described in said mortgages, the aggregate principal value of such notes being approximately \$85,233.78, all bearing interest at the rate of 6% per annum until maturity and 8% after maturity, interest payable annually, and the principal payable in installments extending over a series of years."

2. Include order dated September 29, 1921, appointing Receiver.

3. Omit answer of Jordan Valley Land and Water Company, but in lieu thereof insert "Answer of Jordan Valley Land and Water Company filed ——." (Insert date of filing.)

4. Omit answer of Jordan Valley Farms, but in lieu thereof insert "Answer of Jordan Valley Farms filed ——." (Insert date of filing.)

5. Include decision of Court after final hearing.

6. Include decree, but omit subparagraphs 1 to 19, inclusive, of paragraph 1 and in lieu thereof insert "Description of mortgages omitted in accordance with the Praeceptum"; also omit subparagraphs 1 to 16, inclusive, of paragraph second, and in lieu thereof insert "Description of mortgages omitted in accordance with Praeceptum." [131]

7. Include petition of E. M. Hoover, Trustee in Bankruptcy, for delivery to him by the Receiver of the Jordan Valley Land and Water Company of certain property.

8. Include answer of J. Humfeld, Receiver, to petition of E. M. Hoover, Trustee.

9. Include petition of T. H. Wegener as trustee for delivery to him of property in possession of J. Humfeld, Receiver.

10. Include answer of J. Humfeld to such petition.

11. Include petition of J. Humfeld filed on or about June 27, 1922, for the approval of his account and the allowance of fees for himself and his counsel.

12. Include answers of E. M. Hoover, Trustee,

and of T. H. Wegener, Trustee, to petition of J. Humfeld.

13. Include order made on or about July 14, 1922, on petition of J. Humfeld, Receiver.

14. Include petition of J. Humfeld, Receiver, filed on or about the 18th day of October, 1922, for permission to make sale under order dated July 14, 1922.

15. Include affidavits of E. M. Hoover, J. H. Richards, Leslie J. Aker, and petition and affidavit of T. H. Wegener, filed on or about October 30, 1922.

16. Include order dated November, 3. 1922.

17. All papers filed in connection with this appeal, viz.: Petition for appeal, assignment of errors, order allowing appeal, bond on appeal, citation, and this praecipe.

In preparing the above record you will please omit the title of all pleadings except on the bill of complaint, but in lieu thereof insert the words "Title of Court and Cause," to be followed by the name of the pleading or instrument. You will [132] also please omit the verification of all pleadings, but in lieu thereof insert, whenever the pleading is verified, the words "Duly verified."

Dated this 8th day of January, 1923.

RICHARDS & HAGA,

CHARLES E. WINSTEAD,

Solicitors for E. M. Hoover, Trustee.

LESLIE J. AKER,

BARGE E. LEONARD,

Solicitors for T. H. Wegener, Trustee.

Filed January 8, 1923. G. H. Marsh, Clerk.
[133]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 4 to 133, inclusive, constitute the transcript of record on appeal in the case in said court in which the Mortgage Company for America is plaintiff and appellee and the Jordan Valley Farms and Jordan Valley Land and Water Company are defendants and E. M. Hoover, Trustee in Bankruptcy of the Estate of the Jordan Valley Land and Water Company, a Bankrupt, and T. H. Wegener, Trustee in Bankruptcy of the Estate of Jordan Valley Farms, a Bankrupt, are appellants. That the said transcript of record has been prepared by me in accordance with the praecipe for transcript filed by the said appellants, and that I have omitted from the said transcript those portions of the record designated by the said praecipe to be omitted and inserted in lieu thereof the statement designated in said praecipe. That the said transcript is a full, true, and correct transcript, in accordance with the directions of said praecipe, of the record and proceedings had in said court and

cause as the same appear of record and on file at my office and in my custody.

I further certify that the cost of the foregoing transcript is \$34.40, and has been paid by the said appellants.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of said court to be affixed, at Portland, in said district, this 24th day of February, 1923.

[Seal]

G. H. MARSH,
Clerk. [134]

[Endorsed]: No. 3987. United States Circuit Court of Appeals for the Ninth Circuit. E. M. Hoover, Trustee in Bankruptcy of the Estate of the Jordan Valley Land and Water Company, a Bankrupt, and T. H. Wegener, Trustee in Bankruptcy of the Estate of the Jordan Valley Farms, a Bankrupt, Appellants, vs. The Mortgage Company for America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Oregon.

Filed February 26, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the District Court of the United States for the
District of Oregon.

February 2, 1923.

MORTGAGE COMPANY FOR AMERICA

vs.

JORDAN VALLEY FARMS and JORDAN VAL-
LEY LAND AND WATER COMPANY.

**Order Extending Time to and Including March 1,
1923, to File Record and Docket Cause.**

Now, at this day, for good cause shown, IT IS
ORDERED that the time for filing the transcript
of record in the above-entitled cause and docketing
the same in the United States Circuit Court of
Appeals for the Ninth Circuit be and the same
hereby is extended to and including March 1, 1923.

R. S. BEAN,

Judge.

[Endorsed]: No. 3987. United States Circuit
Court of Appeals for the Ninth Circuit. Order Un-
der Subdivision 1 of Rule 16 Enlarging Time to and
Including March, 1, 1923, to File Record and Docket
Cause. Filed Feb. 26, 1923. F. D. Monckton,
Clerk.

